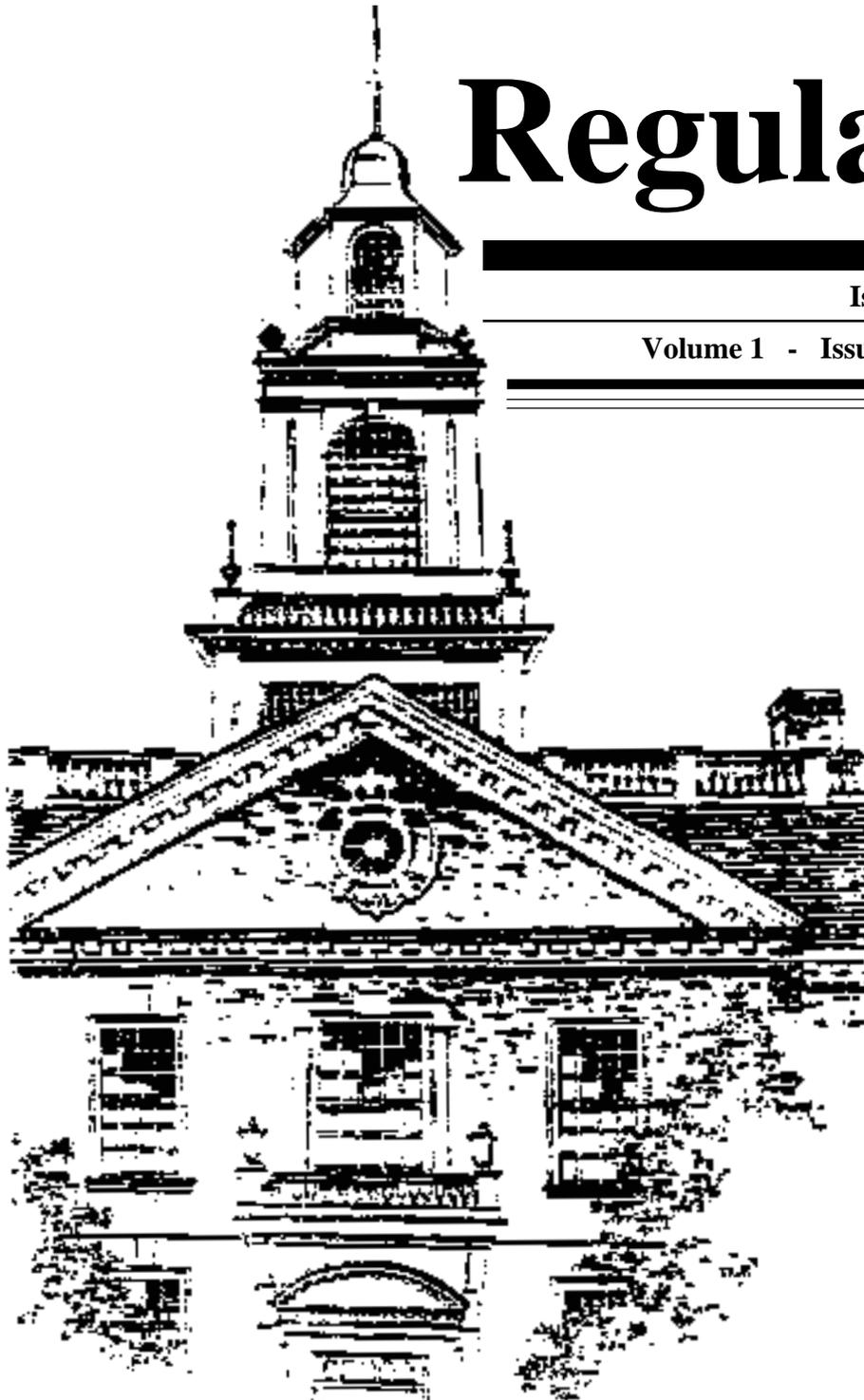

Delaware Register of Regulations



Issue Date: December 1, 1997

Volume 1 - Issue 6

Pages 639 - 775

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before November 15, 1997.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

SUBSCRIPTION INFORMATION

A yearly subscription for the Delaware Register of Regulations costs \$100.00 per year from January - December, for 12 issues. Single copies are available at a cost of \$9.00 per issue, including postage. For more information contact the **Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.**

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code

Sections 10103 & 10128(m)(1)

(3 **Del.C.** 10103, 10128(m)(1))

The Commission proposes the repeal of Rule 15.02(e) pursuant to 3 **Del. C.** sections 10103 and 10128(m)(1), and 29 **Del. C.** section 10115. The proposed repeal of Rule 15.02(e) would allow for two year old horses to participate in the bleeder program. The proposed Rule will be considered by the Commission at its next regularly scheduled meeting on January 5, 1997 at 11:00 a.m. at the Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Copies of the proposed rule may be obtained from the Commission. Comments may be submitted in writing to the Commission Office on or before 4:00 p.m. on December 30, 1998. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to

the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions.

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Licensee's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Licensee's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Licensee's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Licensee's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall

be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 1/2) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 1/2 hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

~~(e) No 2-year-old horse will be acceptable for the Bleeder Program.~~

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for sixty (60) calendar days. A horse which bleeds a third time will be barred from further racing in the State of Delaware. A positive endoscopic examination shall be classed as a first time bleeder.

REVISED: 6/19/92

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122 (14 Del.C. 122)

EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C. SECTION 122(d)

THE DELAWARE ADMINISTRATOR STANDARDS

A. TYPE OF REGULATORY ACTION REQUESTED
New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION

The Delaware Administrator Standards are recommended for adoption as regulation. The Standards are the result of the work of a committee of twenty-one educators representing building administrators, central office administrators, Department of Education staff, teachers, school boards and higher education. The committee convened on January 13, 1997 to begin the task

of articulating the standards. The work of the committee was made easier by the fact that an ad hoc committee made up of representatives of various professional groups had been working on the same task, albeit for a different purpose, for the past several years. In addition, the committee was fortunate to have a national leader in the development of administrator standards, Scott Thomson, recently retired Executive Director of the National Policy Board for Educational Administration, as their consultant.

The Administrator Standards are a clear and defining statement of what all school administrators should know and be able to do regardless of specific job responsibilities. These Standards apply to all educational administrators requiring state licensure to practice. Key to building a cadre of school administrators possessing these attributes is an expectation that the profession of educational leadership will possess the characteristics of all other major professions. These characteristics include a common core of knowledge together with demonstrated performance, ethical standards and accountability to the public.

These Delaware Administrator Standards reflect a solid compatibility with the two national documents, Standards for School Leaders prepared by the Interstate School Leaders Licensure Consortium (ISLLC) and Curriculum Guidelines for Advanced Programs in Educational Leadership approved by the National Council for the Accreditation of Teacher Education (NCATE). There is also a high level of compatibility with the Delaware Teaching Standards. The Standards address Systemic Leadership, Instructional Leadership, Community and Political Leadership, Organizational Leadership and Interpersonal and Ethical Leadership.

The Delaware Administrator Standards Regulations include the five Standards with Knowledge and Performance Indicators for each Standard.

C. IMPACT CRITERIA

1. Will the regulations help improve student achievement as measured against state achievement standards?

The second Standard which addresses instructional leadership should certainly reinforce and strengthen student work on the state content standards.

2. Will the regulations help ensure that all students receive an equitable education?

These Standards will move the reform another step closer to the intended outcome that all children will have access to the full academic curriculum. These Standards apply to all administrators, and there is a special emphasis within the Standards on diversity and diverse learners.

3. Will the regulations help to ensure that all students' health and safety are adequately protected?

These regulations are not designed to address health and safety issues, but Standard four, Organizational Leadership, does refer to creating a safe school environment.

4. Will the regulations help to ensure that all students' legal rights are respected?

The Administrator Standards will assure that students have an opportunity for an education that is focused on the content for which they need to show mastery on future statewide assessments.

5. Will the regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The Standards define administrative practice and will eventually effect State licensure, professional development and recertification, performance appraisal and accreditation of university programs which prepare educational administrators. These are statewide standards, but implementation authority and flexibility will remain with the local school boards and buildings.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

It is not anticipated that any additional requirements for reporting or administering the Standards will be imposed and these regulations do not require any at this time.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The implementation of the Administrator Standards and the accountability for the implementation will be left with the local school districts.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The Administrator Standards are an integral part of the total accountability plan. They are matched to the Teaching Standards and to the student Content Standards with the intent of placing emphasis on the importance of students meeting the content standards.

9. Is there a less burdensome method for addressing the purpose of the regulation?

It is important that these Standards have regulatory status since they will be the foundation for numerous other initiatives in the accountability plan.

10. What is the cost to the state and local school boards of compliance with the regulation?

The cost of implementing these Standards will be included in the cost projections for the statewide accountability plan.

THIS REGULATORY CHANGE WILL BE CONSIDERED AT THE DECEMBER 18, 1997 STATE BOARD OF EDUCATION MEETING.

Delaware Administrator Standards

1. Systemic Leadership: An educational leader possesses the knowledge and skills to foster vision and purpose, to achieve common goals, to frame problems, to utilize information, to exercise leadership processes, and to promote teamwork to achieve the vision.

Knowledge

The educational leader has knowledge and understanding of:

- purposes of education.
- strategic planning and vision building.
- learning communities.
- organizational change processes.
- consensus building and negotiating.
- leadership and motivation.
- problem framing and problem resolution.
- data collection, analysis, and interpretation.
- social and political influences affecting schools.

Performance

The educational leader prepares for and acts to:

- create a shared vision of learning that promotes high levels of success for all students.
- develop a school community focusing on teaching and learning.
- facilitate collegiality and teamwork by creating conditions that motivate staff, students, and families to achieve the shared vision.
- utilize the change process to improve the organization.
- frame, analyze, and resolve issues using problem-solving techniques and decision-making

skills.

- gather, analyze, and utilize data for strategic planning and decision-making using appropriate technologies.
- communicate the vision and core beliefs of the school to the school community.
- recognize potential opportunities and barriers to achieving the school community's vision, and initiate strategies to address them.
- monitor and revise the vision and mission regularly with the school community.

2. Instructional Leadership: An educational leader possesses the knowledge and skills to facilitate the design of appropriate standards-based curriculum, to develop a positive learning environment, to initiate with faculty a variety of instructional programs, to assess outcomes, and to plan professional development activities with staff.

Knowledge

The educational leader has knowledge and understanding of:

- student growth and development.
- applied learning theories.
- curriculum design, implementation, evaluation and refinement.
- instructional principles and strategies.
- instructional technologies.
- special needs of diverse student populations.
- supervision and performance appraisal strategies.
- measurement theory and assessment related issues.
- adult learning and professional development strategies.
- Delaware content standards.

Performance

The educational leader prepares for and acts to:

- model a strong commitment to teaching and learning.
- collaborate with staff to plan and implement curriculum based on student needs, research, informed practice, governmental policies, and the recommendations of national groups.
- develop collaboratively a learning organization that focuses on improving instruction,

incorporates best practice, and promotes student achievement.

- incorporate various staffing patterns, student grouping plans, scheduling patterns, and organizational structures to support teaching strategies appropriate to desired student outcomes.
- facilitate with teachers the selection of learning materials and experiences appropriate for various learning styles and specific student needs.
- promote learning responsive to gender, ethnicity, culture, socio-economic needs, and exceptionalities.
- support instruction that develops thinking skills, promotes problem solving, and applies learning.
- assure a variety of assessment strategies to measure desired student outcomes.
- collect and analyze student data to improve curriculum and instruction.
- incorporate technologies into the instructional system.
- integrate co-curricular and extra-curricular activities with the instructional program.
- facilitate the development of professional growth programs which promote continuous improvement.
- utilize supervisory and performance appraisal techniques consistent with state policy.

3. Community and Political Leadership: An educational leader possesses the knowledge and skills to act in accordance with legal provisions and statutory requirements, to influence public policy, to apply regulatory standards, to understand schools as political systems, to inform and involve parents and community groups, and to develop public relations and media relations programs.

Knowledge

The educational leader has knowledge and understanding of:

- federal and state constitutional, statutory and regulatory provisions, and judicial decisions governing education.
- common law and contractual requirements.
- political, social, cultural and economic issues and forces affecting education.
- policy formulation, implementation and evaluation at the federal, state and local levels.
- public school governance and school board

functions.

- family and community involvement in appropriate policy development, program planning and assessment procedures.
- conditions and dynamics of the diverse school community.
- school communities as political systems.
- public and media relations.

Performance

The educational leader prepares for and acts to:

- apply federal and state constitutional, statutory and regulatory provisions, judicial decisions, common law requirements, and contractual agreements to schools and school personnel.
- propose and influence policies that benefit students and schools.
- interact with the diverse school community to benefit students.
- develop relationships with families to strengthen educational commitment and opportunity.
- identify and influence key opinion leaders and organizations to generate support for school goals and programs.
- assure that ethical standards be applied to the development and implementation of policies.
- involve the school community, as appropriate, in planning and assessing school policies and programs.
- articulate the district and school educational vision and program initiatives.
- develop partnerships with public and private organizations to improve educational opportunities for all students.
- work with local governing boards.
- implement staff communications and public relations strategies for the benefit of students and schools.
- communicate with parents, the community, and school personnel, utilizing available technologies.

4. Organizational Leadership: An educational leader possesses the knowledge and skills to establish and improve organizational structure and processes, to design and implement operational plans, to secure and manage resources, and to engage others in the decision making process.

Knowledge

The educational leader has knowledge and understanding of:

- organizational and management systems and technologies.
- operational procedures.
- budget planning and management processes.
- management techniques.
- facilities and support services management.

Performance

The educational leader prepares for and acts to:

- establish operational plans and procedures to accomplish goals.
- implement management processes and procedures which recognize the value of decentralized and centralized decisions.
- use collaborative processes to develop procedures and make decisions.
- prioritize individual and organizational time to accomplish educational goals.
- review organizational structures and management systems regularly.
- develop a budget planning process which reflects school and district priorities.
- perform budget management and reporting functions.
- apply technologies to management operations.
- utilize the change process for improving organizational structure and management.
- create a safe school environment.
- manage collective bargaining agreements.
- manage capital goods and support services.

5. Interpersonal and Ethical Leadership: An educational leader possesses the knowledge and interpersonal skills to facilitate teamwork and collegiality and the attributes to act ethically and with integrity.

Knowledge

The educational leader has knowledge and understanding of:

- professional codes of ethics.
- ethical frameworks and perspectives.
- communication processes and skills.

- consensus-building and negotiating strategies.
- interpersonal processes.
- conflict management.
- counseling and mentoring.
- values of the diverse school community.
- leadership by example.

Performance

The educational leader prepares for and acts to:

- demonstrate by example a high standard of professional and personal ethics.
- make decisions within an ethical framework.
- develop an organizational ethos to guide school policies and programs, and to encourage a positive school culture.
- create a culture of trust and open communication.
- exhibit sensitivity, respect, tact, and consistency in interpersonal relations.
- use effective written, verbal and non-verbal communication.
- foster continuous professional growth.
- develop leadership opportunities for staff.
- utilize the knowledge, skills, and experiences of the diverse school community.
- resolve conflicts and tensions.
- promote awareness of and sensitivity to ethnicity, gender, culture, and exceptionalities.
- utilize counseling and mentoring techniques.
- examine and consider the prevailing values of the community.
- promote integrity and ethical behavior of others within the school community.
- celebrate student and staff accomplishments.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122 (14 Del.C. 122)

EDUCATIONAL IMPACT ANALYSIS
PURSUANT
TO 14 DEL. C. SECTION 122(d)

THE DELAWARE TEACHING STANDARDS**A. TYPE OF REGULATORY ACTION REQUESTED**
New Regulation**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Delaware Teaching Standards are recommended for adoption as regulation. The Standards are a result of the work of a special Task Force for Professional Teaching Standards comprised of forty one teachers, administrators, teacher educators and representatives of the public. These Standards are composed of a set of performance based standards describing what teachers should know and be able to do, regardless of specialty area. These Teaching Standards are part of the Delaware Professional Standards Council's Educational Plan for Certification and Career Development and reflect the new content standards for Delaware's students as well as to the standards for "accomplished teachers" which are the basis for certification by the National Board for Professional Teaching Standards. The Standards have had an extensive review process by both external experts and educators within the state. All educators in the state were sent a copy of the standards and asked to send their written responses to a questionnaire to the University of Delaware for analysis. Modifications were made to the standards based on the feedback from the questionnaire.

The Delaware Teaching Standards will be used in designing and evaluating teacher education programs, inducting, mentoring and assessing teachers and in organizing in-service and professional development activities. In other words the Teaching Standards will be the foundation for every segment of the professional careers of Delaware teachers, from pre-service through beginning practice and continuing professional growth. In practice these are not generic, one size fits all teaching behaviors. In order to meet the standards, a teacher must exhibit them in the context of his or her actual teaching responsibilities and at a proficiency appropriate to his or her career stage.

The Delaware Teaching Standards Regulations include the twelve Standards Statements, with Knowledge Components and Performance Indicators for each Standard and a Glossary of thirty definitions.

C. IMPACT CRITERIA

1. Will the regulations help improve student achievement as measured against state achievement standards?

The Teaching Standards will, when fully implemented in the form of standards by content area, directly reflect the student content standards. Requiring teachers to possess the knowledge that the students are required to learn will be a factor in improving student

achievement and will be part of the total program needed to implement the student content standards.

2. Will the regulations help ensure that all students receive an equitable education?

These regulations will move the reform another step closer to the intended outcome that all children have access to the full academic curriculum. These Standards apply to all teachers and there is a special emphasis within the Standards on diversity and diverse learners.

3. Will the regulations help to ensure that all students' health and safety are adequately protected?

These regulations are not designed to specifically address health and safety issues. One of the Standards specifically addresses the environment in which teaching and learning take place and one of the indicators for this Standard requires that the school environment is safe.

4. Will the regulations help to ensure that all students' legal rights are respected?

The Teaching Standards will assure that students have the opportunity for an education that is focused on the content for which they need to show mastery on future statewide assessments.

5. Will the regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The Standards define teaching and teaching behaviors and will eventually effect teacher preparation programs, teacher evaluation instruments and staff development programs. These are statewide standards but implementation authority and flexibility will remain with the local school boards and buildings.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

It is not anticipated that any additional requirements for reporting or administering the Standards will be imposed and these regulations do not require any at this time.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The implementation of the Teaching Standards and the accountability for the implementation will be left with the local school districts.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational

policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The Teaching Standards are an integral part of the total accountability plan. When more content or grade level specific teaching standards are developed they will be a direct reflection of the student content standards for each subject area. Teachers will be held responsible for knowing the content that they are responsible for teaching to the students.

9. Is there a less burdensome method for addressing the purpose of the regulation?

It is important that these Standards have regulatory status since they will be the foundation for numerous other initiatives in the accountability plan.

10. What is the cost to the state and local school boards of compliance with the regulation?

The cost of implementing these Standards will be included in the cost projections for the statewide accountability plan.

THIS REGULATORY CHANGE WILL BE CONSIDERED AT THE DECEMBER 18, 1997 STATE BOARD OF EDUCATION MEETING.

Delaware Professional Teaching Standards

1. Content: The teacher understands the core concepts and structure(s) of the discipline(s) and creates learning experiences that make the content meaningful to students.

The teacher...

Knowledge Components

- understands major concepts, principles, and theories that are central to the discipline.
- understands the dynamic and complex nature of the content of the discipline.
- understands the processes of inquiry central to the discipline.
- understands the relationship of knowledge within the discipline to other content areas and to life applications.

Performance Indicators

- uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding.

- anticipates and adjusts for common misunderstandings that impede learning within the discipline.
- engages students in generating and testing knowledge according to the processes of inquiry of the discipline.
- creates learning experiences that make connections to other content areas and to life experiences.

2. Human Development and Learning: The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of the students.

The teacher...

Knowledge Components

- understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind.
- understands human development, including the ranges of individual variation within each domain.
- understands the interaction between student development and learning.

Performance Indicators

- chooses developmentally appropriate instructional strategies that promote student learning.
- develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development.

3. Diverse Learners: The teacher understands how students differ and adapts instruction for diverse learners.

The teacher...

Knowledge Components

- understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community.
- understands differences in approaches to learning and performance, including learning styles, multiple intelligences, and performance modes.
- understands cultural diversity and how to

incorporate multi-cultural experiences into instruction.

- understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences.
- understands the process of second language acquisition and how to access strategies to support learning for students whose first language is not English.
- understands the needs of culturally and/or linguistically diverse students.
- understands when and how to access appropriate resources or services to meet special learning needs.

Performance Indicators

- accepts and values all students.
- treats all students equitably.
- respects students as individuals with differing experiences, skills, talents, and interests.
- uses cultural diversity and individual student experiences to enrich instruction.
- designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes.
- makes appropriate provisions for individual students who have particular learning differences or needs.

4. Communication: The teacher understands and uses effective communication.

The teacher...

Knowledge Components

- understands communication theory and its application.
- understands effective oral, written, non-verbal, and media communication techniques.
- understands the importance of audience and purpose when selecting ways to communicate ideas.
- understands how cultural and gender differences may affect communication in the classroom.

Performance Indicators

- uses a variety of communication techniques.

- communicates effectively with diverse populations.
- models accurate and grammatically correct language.
- creates opportunities for students to learn effective communication.

5. Learning Environment: The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self-motivation, and positive social interaction.

The teacher...

Knowledge Components

- understands principles of effective classroom management.
- understands factors that influence motivation and engagement and how to help students become self-motivated.
- understands individual behavior and how individuals behave in groups.
- understands group dynamics and how groups function within a community.
- understands how to help students learn to participate effectively in groups.

Performance Indicators

- establishes and maintains a classroom environment with clear expectations and standards of behavior.
- organizes, allocates, and manages time, materials, and physical space to support learning.
- establishes classroom practices that promote a safe environment.
- creates a learning community which respects individual differences.
- establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning.
- creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding.
- creates a learning community in which students work independently and collaboratively.
- encourages students to assume responsibility for their own learning and behavior.

6. Planning for Instruction: The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

The teacher...

Knowledge Components

- understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning.
- understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation.
- understands how to develop short- and long-range plans consistent with curriculum goals, learner diversity, and learning theory.
- understands how to make connections between student experiences and education goals.

Performance Indicators

- evaluates teaching resources and materials for accuracy and usefulness.
- applies principles of scope and sequence when planning instruction.
- creates approaches to learning that are interdisciplinary and that integrate multiple content areas.
- creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals.
- uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students.
- incorporates authentic experiences into instructional planning.
- creates multiple learning activities that allow for student choice.
- establishes and communicates expectations for student learning.
- creates and adapts short- and long-range plans to achieve the expectations for student learning.
- incorporates assessment components into instructional planning.

7. Instructional Strategies: The teacher understands a variety of instructional approaches and uses them to promote student thinking, understanding, and application of knowledge.

The teacher...

Knowledge Components

- understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning.
- understands the relationship between instructional approaches, assessment, and the types of learning promoted.
- understands how instructional materials and educational technologies enhance learning.

Performance Indicators

- uses a range of instructional approaches that allows students to explore concepts and develop an in-depth understanding of content.
- designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills.
- designs instructional activities that provide opportunities for students to apply knowledge.
- uses a variety of materials and educational technologies to enhance student thinking and further conceptual understanding.
- assumes different roles in the instructional process based on the content and purposes of instruction.
- uses a range of questioning techniques to promote different levels of understanding.
- emphasizes communication as a vehicle for learning, through the use of discussion, listening, collaboration, and responding to the ideas of others.
- links new concepts to student prior knowledge.
- promotes student awareness of their own thought processes and how to use reflection to build new understandings.
- incorporates assessment components into instructional delivery.

8. Assessment: The teacher understands multiple assessment strategies and uses them for the continuous development of students.

The teacher...

Knowledge Components

- understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias).
- understands assessment as a means of collecting information about student progress.
- understands the purposes and characteristics of different kinds of assessments.
- understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning.
- understands how to use the results of assessment to reflect on and modify teaching.

Performance Indicators

- uses assessment to diagnose student learning needs as a basis for designing instruction.
- uses a variety of assessment modes and multiple measures to evaluate student learning.
- uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance.
- aligns assessment with instruction.
- maintains accurate records and communicates student progress.
- involves students in self-assessment to help them become aware of their strengths and needs.
- encourages students to establish personal goals for learning based on self-assessment and assessments results.
- modifies instruction based on assessment results.

9. Professional Growth: The teacher understands the importance of continuous learning and pursues opportunities to improve teaching.

The teacher...

Knowledge Components

- understands that reflection on teaching is an integral part of professional growth.
- understands the implications of educational research for teaching.
- understands methods of inquiry that provide for a variety of self-assessment and problem-solving strategies for reflecting on practice.

Performance Indicators

- engages in continuous learning.
- participates in professional discourse about educational issues.
- uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice.
- collaborates with other professionals as resources for problem solving, generating new ideas, sharing experiences, and seeking and giving feedback.

10. Professional Relationships: The teacher understands the role of the school in the community and collaborates with colleagues, parents/guardians, and other members of the community to support student learning and well-being.

The teacher...

Knowledge Components

- understands how schools are organized and operate.
- understands schools as organizations within the larger community context.
- understands the importance of community-school interaction.
- understands the importance of collaboration in education.

Performance Indicators

- cooperates with colleagues to develop an effective learning climate within the school.
- collaborates with other professionals to solve problems and make decisions to promote student success.
- develops relationships with parents and guardians to acquire an understanding of the students' lives outside of the school.
- works effectively with parents/guardians and other members of the community to advocate for student need and to promote learning.
- identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career opportunities.

11. Educational Technology: The teacher understands the role of educational technology in learning and uses educational technology as an instructional and management tool.

The teacher...

Knowledge Components

- understands how to use various educational technological tools to access and manage information.
- understands how to integrate educational technology into classroom instruction.
- understands how to review and evaluate educational technologies to determine instructional value.
- understands the uses of instructional technology to address student needs.

Performance Indicators

- designs instruction to promote student skills in the use of educational technologies to access and manage information.
- uses a wide range of instructional technologies to enhance student learning and problem solving.
- uses technological advances in communication to enrich discourse in the classroom.
- uses appropriate educational technology to create and maintain data bases for monitoring student progress.

12. Professional Conduct: The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

The teacher...

Knowledge Components

- understands school policies and procedures.
- understands legal issues in education.
- understands the codes of conduct of professional education organizations.

Performance Indicators

- acts in the best interests of students.
- follows school policies and procedures, respecting the boundaries of professional responsibilities,

when working with students, colleagues, and families.

- follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities.
- interacts with students, colleagues, parents, and others in a professional manner.
- follows codes of professional conduct adopted by the Delaware Professional Standards Council.*

*to be developed.

GLOSSARY

Alignment of Assessment

The ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and task are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.

Authentic Experiences

The use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

Culturally and/or Linguistically Diverse

Students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

Codes of Conduct

Many professional educational organizations have adopted codes of conduct that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject areas.

Communication Theory

An understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

Community

The school community includes: teachers, administrators, students, and parents and/or guardians. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the broader society or community in which students will live.

Disciplines

Academic disciplines include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

Discourse

Discourse refers to both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss, agree and disagree, and explore the discipline.

Diverse Learners

Students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

Domains

The broad areas of human development - intellectual, social, emotional, and physical - that influence learning.

Educational Technology

The use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

Habits of Mind

Mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

Health

Health issues that can affect learning range from cerebral palsy, Down's Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

Instructional Technology

The use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

Learning Theory

An understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

Meaningful (to students)

Meaningful is intended to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

Measurement Theory

An understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

Media Communication

The use of technologies that document events (e.g., audio-tape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

Methods (Process) of Inquiry

Inquiry is the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

Multicultural

The term multicultural is usually used as an adjective to describe the diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

Multiple Assessments

Decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address

the full range of content.

Multiple Intelligences

Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, interpersonal, intra-personal) that describe distinct aspects of "intelligent".

Non-verbal Communication

Communication through means other than the use of words (e.g., facial expressions, body position, action).

Pedagogical Knowledge

Pedagogical knowledge is the knowledge of how to teach - the knowledge of instructional methods.

Performance

Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

Performance Modes

The range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

Professional Growth

The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

Structures

The structures of disciplines provide the overall framework which both connect and transcend the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

Technology

The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

Theory

The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122 (14 **Del.C.** 122)

EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C. SECTION 122(d)

REQUIREMENTS FOR VOCATIONAL TECHNICAL EDUCATION PROGRAMS

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Requirements for Vocational Technical Programs, section V.A.3. of the Vocational Technical Education section of the Handbook for K-12 Education must be amended. The amendment is necessary to clearly state the requirements that are regulatory. In order to achieve this end all of the requirements have been restated as "musts" some have been combined and items l., q., r., and s. have been eliminated. Item l. cannot be a requirement and items q., r., and s. are required by state or federal laws. The amended section will now become V.A.1. due to the repeal of other sections. The section will now provide a specific list of what must be in place for a Vocational Technical program to be approved by the State Department of Education.

C. IMPACT CRITERIA

1. Will the amendments help improve student achievement as measured against state achievement standards?

If all of the regulations are in place the vocational technical program offered will help students to meet the state achievement standards.

2. Will the amendments help ensure that all students receive an equitable education?

The amendment clarifies the regulations and the regulations were designed to assure that all students received the same high quality vocational technical program offerings.

3. Will the amendments help to ensure that all students' health and safety are adequately protected?

Health and safety concerns are a critical issue for vocational technical programs and the amendments do not change that focus.

4. Will the amendments help to ensure that all students' legal rights are respected?

The student's right to quality programs is reaffirmed by the amendments.

5. Will the amendments preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amendments do not change the authority and flexibility of decision makers at the local board and school level.

6. Will the amendments place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amendments do not place any unnecessary reporting or administrative requirements on the decision makers at the local board and school level.

7. Will decision making authority and accountability for addressing the subject to be amended be placed in the same entity?

The amendments as the original regulations, keep the decision making and accountability in the same entity.

8. Will the amendments be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amendments, as the original regulation did, compliment and reinforce the vocational technical program standards as well as those in the core academic areas.

9. Is there a less burdensome method for addressing the purpose of the amendments?

The amendments are necessary to clarify the elements of the regulations.

10. What is the cost to the state and local school boards of compliance with the amendments?

There is no additional cost and presently both state and federal funds support vocational technical programs.

**THIS REGULATORY CHANGE WILL BE CONSIDERED AT THE
DECEMBER 18, 1997 STATE BOARD OF EDUCATION MEETING.**

AS AMENDED

**V. VOCATIONAL-TECHNICAL EDUCATION
PROGRAMS**

**A. REQUIREMENTS FOR VOCATIONAL-
TECHNICAL EDUCATION PROGRAMS**

1. All Vocational Technical Programs must:
 - a. meet the provisions of Delaware's State Plan for Vocational Education.
 - b. meet the provisions of the content standards approved by the Department of Education or if there are no approved state content standards meet the national program standards.
 2. All local school districts offering state approved vocational-technical education programs must:
 - a. have the approval of the Department of Education before implementing new programs. New programs of a similar nature may not be approved where enrollment may compete with already existing programs.
 - b. have adequate funding to support and sustain the instructional program.
 - c. employ teachers certified in vocational technical education program areas.
 - d. make provisions for meeting the unique needs of all students.
 - e. establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.
 - f. use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing vocational-technical education programs.
 - g. survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.
 - h. survey the student population to determine their occupational interests and needs.
 - i. organize and financially support vocational-technical student organizations as integral components of vocational-technical education programs in public schools that complement and enrich instruction. The following vocational student organizations are affiliated in Delaware:
 - Business Professionals of America (BPA)
 - Technology Student Association (TSA)
 - Distributive Education Clubs of America (DECA), an association of marketing students

Future Homemakers of America (FHA/
HERO)

The National FFA Organization

Vocational Industrial Clubs of America
(VICA)

j. integrate related academic content into individual vocational-technical courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

k. schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day and preferably three periods, five days a week for two or more years. Trade and Industry programs are highly specialized and are conducted in comprehensive vocational technical school districts. Any exception must be requested in writing showing just cause, and be approved by the Department of Education.

l. establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a vocational technical education program in a Vocational Technical School District.

m. use equipment and facilities comparable to that used by local business and industry for which the vocational technical program is preparing students.

**3. VOCATIONAL-TECHNICAL
EDUCATION PROGRAM REQUIREMENTS**

~~Requirements for organizing and implementing vocational education programs include the following:~~

- ~~a. All programs must meet the provisions of Delaware's State Plan for Vocational Education.~~
- ~~b. All programs must meet the provisions of the content standards approved by the State Board of Education.~~
- ~~c. New programs and new courses being established must have the recommendation of the Department of Public Instruction and approval of the State Board of Education prior to implementation on the local level.~~
- ~~d. Funding must be provided to support and sustain the instructional program.~~
- ~~e. A staff member meeting certification requirements in the vocational-technical education program area must be provided to teach the course.~~
- ~~f. Funding provisions must be made for meeting the unique needs of all students.~~
- ~~g. An advisory committee which includes labor and management personnel must be organized to assist in the development and operation of the program.~~
- ~~h. Present and projected labor market~~

PROPOSED REGULATIONS

information, available from the Delaware Occupational Information Coordinating Committee, should be used in determining the need for new and continuing vocational-technical education programs:

i. Local business and industry should be surveyed by local school districts to determine occupational needs, availability of placement and employment opportunities for program completers.

j. The student population should be surveyed by local school districts to determine occupational interests and needs.

k. Equipment and facilities should be comparable to that used by business and industry.

l. Students enrolled in vocational-technical education programs should be able to benefit from the instructional process and have the potential of being employed by business and industry in the occupation for which they were trained.

m. Trade and industrial sequential programs of a highly specialized nature should be conducted at the vocational-technical schools. Programs other than trade and industrial programs which provide entry level skills meeting approved content standards may be conducted in the comprehensive K-12 school district. New programs of a similar nature will not be approved where enrollment may compete with programs at vocational-technical schools or regular high schools.

Trade and industrial education programs must be offered a minimum of two consecutive periods a day and preferably three periods, five days a week for two or more years. Any exception must be requested in writing showing just cause, and be approved by the State Department of Public Instruction.

n. All programs should reflect the National standards developed as quality indicators for Technology Education, Trade and Industrial Education, Home Economics, and Agriculture.

o. Vocational-technical student organizations shall be organized as integral components of vocational-technical education programs in public schools to complement and enrich instruction.

(1) "Local plans and any program proposals submitted for State Board approval and/or funding shall contain adequate provision for support of each vocational student organization affiliated with the vocational-technical education program(s) offered in each school." (State Board Approved June 1973)

(2) The following vocational student organizations are affiliated in Delaware:

- (a) Business Professionals of America (BPA)
- (b) Technology Student Association (TSA)
- (c) Distributive Education

Clubs of America (DECA)

(d) Future Homemakers of America (FHA/HERO)

(e) Future Farmers of America (FFA)

(f) Vocational Industrial Clubs of America (VICA)

p. Vocational programs of instruction are required to be taught in a manner that fully integrates academic and vocational subject matter. Students should be guided through a sequential course selection process that reflects the necessary academic preparation required by the student's vocational course and career goals.

q. Inventory requirements for equipment purchased with state and federal funds require that equipment records must be maintained and a physical inventory must be taken once every two years. A control system must be in effect to insure against loss, damage, or theft. Adequate maintenance procedures must be implemented, and proper disposal procedures must be followed for unneeded property.

r. Vocational-technical education programs must be monitored by the Department of Public Instruction to assure compliance with the Office for Civil Rights Guidelines for Vocational Education Programs.

s. It is the policy of the Delaware State Board of Education that an effective safety education program be conducted through the school system with its prime objective being accident prevention.

t. Local school districts shall not establish policies, practices, rules or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity of learning about, enrolling in and completing a vocational education program in a Vocational-Technical School District. (State Board Approved March 1985, Revised June 1990)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122 (14 Del.C. 122)

The repeal of the following parts from section V., Vocational Technical Education Programs in the Handbook for K-12 Education is recommended. The parts include, A.1., Purpose of Vocational Technical Education, A.2., Vocational Technical Program Areas, B.1., Applying for State Vocational Education Program Funding, C., Evaluation and Monitoring, D.1., Technical Preparation Programs, D.3., Work Study Programs, F.1., Regular Vocational Technical Education Students, F.2., Vocational Technical Education Unit, G.1., Federal

Project Application Process and Procedure, and H., Vocational Assessments for Special Populations of Students, H.1., Requirements. The repeals are required because these sections either repeat federal or state laws or simply provide technical assistance on issues. Part A.3., Requirements for Vocational Education Programs, is regulatory as amended and reflects the bulk of the Vocational Technical Program regulations in Section V. of the Handbook for K-12 Education. The two remaining sections D.2. a-g, Cooperative Education, and E.1. a and b., Credit for Vocational Technical Programs, will be brought back with extensive amendments in three or four months. For now, with all of the repealed sections eliminated, D.2. a-g., will become B.1. and 2. (a) (1)-(7) and E.1. a and b will become C.1. (a) and (b).

THIS REGULATORY CHANGE WILL BE CONSIDERED AT THE DECEMBER 18, 1997 STATE BOARD OF EDUCATION MEETING.

V. VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

A. VOCATIONAL-TECHNICAL EDUCATION

1. PURPOSE OF VOCATIONAL-TECHNICAL EDUCATION

a. To provide a total program of offerings which is in full partnership and equal standing with all components of the educational systems and is:

(1) capable of meeting the individual needs, interests, abilities, and aspirations of each student; and

(2) realistic in light of actual or anticipated opportunities for employment, advancement education, and practical life application.

b. Specific purposes of vocational-technical education are:

(1) to prepare individuals for entry-level employment and adaptability in later employment in recognized occupations, new occupations, and emerging occupations at various levels of competence;

(2) to prepare individuals for participation in advanced or highly skilled post-secondary vocational and technical education such as school-to-work transition programs;

(3) to provide individuals with laboratory experiences and activities for vocational skill development and assist them in making informed and meaningful occupational choices; and

(4) to provide individuals with laboratory experiences and activities which assist them 1) in the making of informed consumer decisions and 2) in the application of practical life skills including but not limited to civic consciousness, social and inter-personal relationships, leadership, responsibility, and an

appreciation for their potential productivity and contribution in the world of work and to provide appropriate programs and supportive services for persons who have academic, socioeconomic, or other disadvantages or disabilities that would prevent them from succeeding in regular programs.

2. VOCATIONAL-TECHNICAL EDUCATION PROGRAM AREAS

- a. Agriscience
- b. Allied Health Education
- c. Business Finance and Marketing
- d. Diversified Occupations
- e. Home Economics
- f. Technology Education
- g. Trades and Industrial Education

B. STATE FUNDED VOCATIONAL-TECHNICAL EDUCATION PROGRAMS

1. APPLYING FOR STATE VOCATIONAL-TECHNICAL EDUCATION PROGRAM FUNDING

State funding is provided for vocational-technical education programs conducted in the local school districts which meet or exceed the state curriculum content standards and other criteria established by the school district. In new vocational-technical education programs being requested, the form titled Application for Approval of New Vocational-Technical Education Programs must also be completed and returned. New vocational-technical education program requests must include the following:

a. program purpose, outline and statement of objectives that satisfy or exceed approved state content standards. NOTE: If state curriculum content standards have not been approved for this program, suggested standards developed according to the state format, must be submitted;

b. documentation justifying need for program, i.e., advisory committee membership and minutes, Labor Department projections, and student interest survey results;

c. a signed Statement of Assurances which is included in the application forms sent to chief school officers the first week in January; and

d. course outlines for approved vocational-technical education programs are to be updated and resubmitted every three years. Any program on the approved list which has not been in operation during the past two years will be deleted and will require a new application to be reactivated.

C. EVALUATION AND MONITORING

All vocational-technical schools are encouraged to participate in the accreditation and review process of the Middle States Association of schools and colleges.

PROPOSED REGULATIONS

The Department of Public Instruction is responsible for monitoring all federally supported vocational programs.

The Federal program evaluations are based primarily on the objectives, activities, and evaluation criteria stated in the approved project proposals. Evaluation visits are scheduled in conjunction with the State Council on Career and Vocational Education.

D. ALTERNATIVE METHODS OF INSTRUCTION

1. TECHNICAL-PREPARATION PROGRAMS

a. The technical preparation program which is also called "Tech Prep" or "Two plus Two" is the formal coordination (through written agreement) of vocational-technical secondary and post-secondary education curricula. This four-year program begins in the junior year of high school and culminates at the second year of post-secondary school.

b. Students may earn post-secondary units of credit prior to high school graduation through participation in this program.

c. A sequential curriculum of academic and technical courses with an integrated approach to the teaching of all subject matter shall be the goal of all tech prep programs.

3. WORK STUDY PROGRAMS

Work study programs that meet established guidelines are specialized programs for disadvantaged students who are in need of financial assistance and are at risk of leaving school. Students must meet the following qualifications:

a. have been accepted for enrollment as a student in an approved vocational education program or already participating in a vocational-technical education plan;

b. are at least fifteen (15) years of age and less than twenty-one (21) years of age at the commencement of employment;

c. are capable of maintaining good standing in their vocational-technical education programs, including other academic content areas, while employed; and

d. are employed by the local educational agency or by other public or nonprofit private agencies or institutions where they may earn up to \$900.00 under minimum wage provisions.

F. VOCATIONAL-TECHNICAL EDUCATION UNIT SYSTEM FOR STATE FUNDING

1. REGULAR VOCATIONAL-TECHNICAL EDUCATION STUDENTS

a. Regular or special education students who are enrolled in State Board of Education approved vocational-technical education courses are to be included in the vocational enrollment and unit count.

b. The distribution of state funds to school districts is based on the "unit" allotment. The secondary unit consists of one teacher for 20 secondary pupils in grades 7-12. (The State makes special provision for children with disabilities by providing for a unit on the basis of a fewer number of pupils.)

c. A maximum of 900 minutes of vocational time per week per student may be credited toward the vocational unit determination.

2. VOCATIONAL-TECHNICAL EDUCATION UNIT

a. The basis for computing the vocational unit of 27,000 pupil minutes is as follows: 30 students per teacher (enrollment 15 to 1 in two 3-hour sessions) times 900 minutes per week instruction for a full-time vocational student (180) minutes per day x 5 days per week) equals 27,000 pupil minutes to the unit:

$$30 \times 900 = 27,000$$

(1) The vocational units for the new full-time New Castle, Polytech, and Sussex Vocational-Technical School Districts shall be calculated on 30 pupils enrolled in vocational-technical education courses as of the last day of September. 14 Del. C. §1703(g) prescribes the unit system formula.

b. Where each of 30 full-time students does not apply, any number of students and their minutes may total 27,000, eg., a vocational unit (with the same limits of 180 minutes per day per student and 900 minutes per week per student). For example, 60 students, each with 450 minutes per week, equals a vocational unit of 27,000 minutes.

c. One-half of the vocational units of pupils shall be deducted from the regular unit entitlement of a comprehensive high school according to the following formula:

vocational units x .5 = deductible (a major fraction shall be considered a whole unit)

d. The "vocational deduct" is applied to partially compensate for the double counting of the vocational students. The deduction is computed on a district basis as follows: The number of Division I vocational units earned in the schools of a district plus the number of "other" vocational units earned by the district's regular and special students who attend vocational programs in area vocational schools divided by two equals the deduct; the deduction will always be rounded off to a whole number. For example:

District vocational units	20
Other vocational units	+ 11 3/15 deduct

e. Summer Vocational-Technical Education Students

Students enrolled in a summer vocational

program which has been approved annually by the State Board of Education, and which is conducted by any school district beyond and in addition to the school year as defined by 14 Del. C. §1023, may be counted in a unit of pupils, grades 7 through 12 inclusive, at the rate of 27,000 pupil minutes per week or major fraction thereof after the first full unit.

f. ~~Co-operative Vocational-Technical Education Students~~

Minutes generated through co-operative work experience programs shall count one-half as much as those generated by pupils enrolled in school based vocational-technical instruction programs. For example, for a pupil who spends 20 periods per week in a co-operative work experience program, the school district shall claim only one-half the 20 periods, or 10 pupil periods. Teacher class time (one period for each 15 students counted) must be provided for coordination of students' on-the-job experiences. Students must be enrolled in an approved related vocational-technical program.

G. ~~HOW TO APPLY FOR FEDERAL VOCATIONAL-TECHNICAL EDUCATION PROGRAM FUNDS~~

1. ~~FEDERAL PROJECT APPLICATION PROCESS AND PROCEDURE~~

a. All persons planning to submit applications for funding should familiarize themselves with the provisions and regulations set forth in the current State Plan for Vocational Education and the appropriate curriculum content standards. Copies of the State Plan for Vocational Education may be found in school libraries and district offices with the person responsible for vocational-technical education programs.

(1) ~~Projects will be reviewed for compliance with Federal regulations and compliance with Office for Civil Rights Guidelines.~~

(2) ~~Projects will be reviewed by the staff from the Department of Public Instruction according to:~~

(a) ~~pertinence of programs to the workplace and to new and merging technologies;~~

(b) ~~responsiveness of programs to the current and projected occupational needs in the state;~~

(c) ~~capacity of programs to facilitate entry into, and participation in, vocational-technical education and to ease the school-to-work and secondary to post-secondary transitions;~~

(d) ~~technological and educational quality of vocational-technical curricula, equipment and instructional materials to enable vocational students and instructors to meet the technological~~

~~demands of the workplace;~~

(e) ~~capacity of vocational-technical education programs to meet the needs for general occupational skills and the improvement of academic foundations in order to address changing job requirements.~~

(3) ~~Technical assistance is provided by the Department of Public Instruction who review the objectives, activities, timelines and evaluation criteria of each project. They are committed to working with potential service providers before and/or during the application process in refining the elements of the project application.~~

H. ~~VOCATIONAL ASSESSMENTS FOR SPECIAL POPULATIONS OF STUDENTS~~

1. ~~REQUIREMENTS~~

a. ~~Every student with a disability enrolling or enrolled in a vocational education program shall receive assessment of interests, abilities, and special needs with respect to successfully completing the vocational education program (P.L. 107.392 [c]) for students with disabilities and other special populations of students.~~

b. ~~Additional vocational assessment may be indicated if test data does not give sufficient information for programming and placement of the student, or the student is not succeeding in the vocational program. Additional information is needed if the student is at risk of dropping out of school, or by the appropriate adult service agency during the formal referral process in the student's final year.~~

c. ~~Individual programs of students who meet any of these four criteria will be reviewed by the IEP team in the case of identified special education students, and the student's advisor/counselor in other cases, to determine the need for additional vocational assessment.~~

d. ~~Vocational assessment instruments must be appropriate for the population being tested. This includes: age, disability, reading levels, native language/primary communication mode.~~

e. ~~Vocational assessment will be administered by staff trained to give the assessment.~~

f. ~~Vocational assessment data will be reviewed with students and parents by designated staff members.~~

PROPOSED REGULATIONS

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code,
Chapter 3 (31 Del.C. Ch. 3)

Pursuant to 31 Del.C. Chapter 3, the Division of Family Services has revised licensing requirements for Residential Child Care Facilities and Day Treatment Programs.

A public hearing to consider the proposed regulations has been scheduled as follows:

January 13, 1998, 10:00 a.m. to 12:00 noon
Delaware Youth and Family Center
First Floor Conference Room 199
1825 Faulkland Road
Wilmington, Delaware 19805

The regulations address general requirements, staff qualifications and training, physical environment and safety, program specifications, health and nutrition, on-grounds educational programs and specialized programs which include: secure residential care, shelter care, transitional care, day treatment programs, restrictive procedures, adventure activity, parenting adolescent facility.

Written comments may be submitted to Janet I. Carter, Licensing Supervisor, Office of Child Care Licensing, 400 Court Street, Dover, Delaware 19901.

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Delaware Licensing Law	
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Delacare Requirements for Residential Child Care Facilities And Day Treatment Programs

CHAPTER 1. LEGAL AUTHORITY, PURPOSE, AND DEFINITIONS

Legal Base

1.01 The legal authority for these licensing Requirements is in the Delaware Code, Title 31, Chapter 3, Paragraphs 341-344.

Purpose

1.02 These provisions shall be known as the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs. These Requirements are designed to protect the health, safety and well-being of children who are placed in residential child care facilities or are enrolled in day treatment programs.

Definitions of Regulated Services

1.03 "Day Treatment Program" means any program that provides highly structured, intensive, non-residential services for fewer than 24 hours each day to children who have either:

- a. Behavioral dysfunctions;
- b. Developmental, emotional, mental or physical impairments; or
- c. chemical dependencies.

Licensed residential child care facilities operating an educational program for residents and day students shall be exempted from being a day treatment program when more than 50 percent of the students in that educational program are residents of the facility.

1.04 "Residential Child Care Facility" means any facility that provides out-of-home, 24-hour care, protection and supervision for children who have either: behavioral dysfunctions; developmental, emotional, mental or physical impairments; or chemical dependencies.

Residential Child Care Facility includes, but is not limited to, the following:

- a. "Parenting Adolescent Facility" means a residential child care facility for adolescent parents caring for their own child(ren).
- b. "Secure Residential Care Facility" means a residential child care facility that is authorized to use locked doors, both exterior and interior, as the means of preventing a child from leaving the building(s) without authorization.
- c. "Shelter Care Facility" means a residential child care facility that provides temporary or emergency care for children for a period of time that does not exceed 30

consecutive calendar days, except as provided for in Requirement 6.04.

d. "Transitional Care Facility" means a residential child care facility that provides care for 12 or fewer adolescents for the purpose of preparing them to live as self-sufficient adults.

A foster home or a psychiatric hospital in which children have been placed by a licensed or authorized child placing agency are not residential child care facilities.

Definition of Terms

1.05 "Adventure Activity Program" means a facility or program whose primary purpose is to engage the children in a course of activities of a hazardous or risk-laden nature. The activity may involve strenuous exercise or physical exertion. It includes high rope challenge courses, wilderness trekking, rock climbing and rappelling, as well as a travel camp of more than 120 consecutive hours' duration involving traveling through more than one state.

1.06 "Aversive Conditioning" means the involuntary, time-limited and reasonable use of a technique or procedure that applies an undesirable, noxious or painful stimulus to a child in order to suppress the specific behavior that is potentially harmful to the child or others, for the purpose of behavior management.

1.07 "Behavior Management" means those principles and methods employed by a licensee:

- a. To help a child achieve positive behavior; and
- b. To address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security and the child's service plan.

1.08 "Chemical Restraint" means the involuntary, unplanned and emergency application of a psychotropic drug to restrict the function or movement of a child for the purpose of behavior management. The planned and routine application of a prescribed psychotropic drug is not a chemical restraint.

1.09 "Chief Administrator" means the person designated by the licensee, or by its governing body, as having day-to-day responsibility for the overall administration and operation of a facility or program and for assuring the care, treatment, safety, and protection of children.

1.10 "Child" means any of the following:

- a. A person who has not reached 18 years of age.
- b. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.

1.11 "Department" means the Delaware Department of Services for Children, Youth and Their Families.

1.12 "Direct Care Supervisor" means a person who is assigned responsibility by a licensee for the supervision of one or more direct care workers.

1.13 "Direct Care Worker" means a person designated by a licensee to provide direct care of children.

1.14 "Division" means the Division of Family Services within the Department.

1.15 "Employee" means any person who is employed by a licensee and any person under contract with a licensee, excluding vendors that do not provide direct services to children.

1.16 "Exclusion" means the involuntary, time-limited removal of a child six years of age or older from his or her environment through the use of non-violent physical intervention and restricting that child in an unlocked room under continuous monitoring and preventing his or her egress, for the purpose of behavior management.

1.17 "Facility" means a residential child care facility.

1.18 "Governing Body" means the person or group of persons with ultimate responsibility for and authority over the operation of a facility or program.

1.19 "Immediately" means an action that is or must be taken without any considerable loss of time.

1.20 "Least Restrictive Treatment" means an intervention method that is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's needs.

1.21 "License" means the Division's granting of authority through a written provisional or regular certification to a facility or a program to operate under applicable State law (s).

1.22 "Licensee" means the legally responsible entity for a licensed facility or program.

1.23 "Living Unit" means a designated area or space

in which a group of children reside or receive care.

1.24 "Locked Isolation" means the involuntary and time-limited confinement of a child in a locked room for the purpose of behavior management.

1.25 "Mechanical Restraint" means the involuntary, time-limited and reasonable use of any device in order to restrict a child's movement or functions or the ability to use his or her hands, arms, or legs, for the purpose of behavior management.

1.26 "Non-violent physical intervention strategies" means the non-punitive, age-appropriate, time-limited and reasonable application of physical holding or other physical interventions that are required:

- a. To restrict the movement or function of a child for the purpose of preventing harm to the child or to others; or,
- b. To prevent the destruction of property when the child fails to respond to non-physical intervention techniques.

1.27 "Parent" means a birth or adoptive parent, legal guardian or any other person having responsibility for, or custody of, a child.

1.28 "Placing Agency" means an organization, either publicly or privately operated, that is legally authorized to place a child in a facility or to refer a child to a program.

1.29 "Positive Reinforcement" means an action that, when systematically and regularly applied following the desired behavior of a child, makes it more likely that the desired behavior will recur.

1.30 "Program" means a Day Treatment Program when it is used alone without an adjective.

1.31 "Psychotropic Drug" means a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system.

1.32 "Record" means the individual file established and maintained for a child.

1.33 "Requirements" means the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs or a portion thereof.

1.34 "Restrictive Procedure" means the involuntary, non-punitive, age-appropriate, time-limited and reasonable use of any action, device, drug or technique that is designed to restrain or restrict a child's movement,

function or mobility for the purpose of:

- a. Reducing serious maladaptive behavior of a child;
- b. Preventing a child from harming either himself or herself, or others;
- c. Preventing the destruction of property; or
- d. Controlling maladaptive behavior when the child has failed to respond to other less restrictive means of behavior management.

Restrictive procedures are aversive conditioning, chemical restraint, exclusion, locked isolation, and mechanical restraint. Non-violent physical intervention strategies and time-out techniques are not restrictive procedures.

1.35 "Service Plan" means a written, prescribed plan that specifies the basis for a child's admission to a facility or program, the techniques to be used to address his or her treatment needs, or goals for family reunification and permanency planning. The plan shall identify the persons responsible for developing and implementing the plan, and the time frames for carrying out the plan while the child is residing in a facility or participating in a program.

1.36 "Service Supervisor" means a person who is assigned responsibility by a licensee for the supervision of one or more service workers.

1.37 "Service Worker" means a person designated by a licensee to coordinate, develop and implement the service plan for a child.

1.38 "Time-Out Technique" means the time-limited removal of a child from his or her immediate environment or the time-limited prohibition of a child to participate in an activity, as specified in Requirements 3.78, 3.79 and 3.80.

1.39 "Treatment" means the various services that are designed, developed, and implemented by a licensee to ameliorate the various educational, health care, medical, psychological, social or other needs of a child.

1.40 "Volunteer" means any person who provides an unpaid service or support to a facility or program for more than 40 hours in a calendar year, and whose primary role or function involves having direct contact with children. The term "volunteer" shall include student interns.

CHAPTER 2. LICENSING PROCESS AND PROCEDURES

License Required to Operate

2.01 An agency, corporation, partnership or individual

shall not operate or maintain a residential child care facility or day treatment program unless issued a license to do so by the Division.

Authority to Inspect

2.02 An applicant or licensee shall allow access to the premises by any authorized representative of the Division, of another state agency, or any local building, fire or health agency for the purpose of determining compliance with applicable provisions of these requirements. On-site inspections may be conducted without prior notice.

2.03 An applicant or licensee shall permit any authorized representative of the Division access to information, files and records relevant to determining compliance with applicable provisions of these requirements.

Issuance of License

2.04 To qualify for a license, an applicant or licensee shall demonstrate to the satisfaction of the Division that it is in full or substantial compliance with applicable provisions of these requirements.

2.05 A license shall be issued only to a facility or program for which application is made and for the address shown on the application. A license shall state the maximum number and age range of children who may be served in a facility or program at any time.

Posting of License

2.06 A licensee shall post its current license to operate a facility or program in a place conspicuous to the public.

License for Each Separate Facility or Program

2.07 A facility or program that operates in two or more buildings at the same site shall have the option of applying for a single license for all buildings at the site, or for a separate license for each building at the site.

2.08 A license shall not be transferable, assignable or subject to sale.

Nullification of License

2.09 When a facility or program is sold, leased, or discontinued, or the operation has moved to a new location, or when the license has been revoked, the current license immediately shall become null and void.

Regular License

2.10 A regular license is issued when the Division determines that an applicant or licensee is in full compliance with applicable provisions of these requirements.

2.11 A regular license is effective for one year from the date of issuance, unless it is:

- a. Modified to a provisional license;
- b. Is revoked; or
- c. Surrendered prior to the expiration date.

Provisional License

2.12 A provisional license may be issued for a period of time not to exceed six months from the date of issuance when the Division determines that an applicant or licensee is in substantial, but not full, compliance with applicable provisions of these requirements, provided that:

- a. There is no serious risk to the health, safety, or well-being of children; and
- b. An applicant or licensee has submitted to the Division and the Division has approved a written corrective action plan.

2.13 The Division may issue as many consecutive provisional licenses as it deems necessary. However, an applicant or licensee shall not operate pursuant to provisional licenses for more than 12 consecutive months.

Replacing a Provisional License with a Regular License

2.14 A provisional license may be replaced with a regular license when the Division determines that an applicant or licensee has corrected all violations in advance of the expiration date of the provisional license and has come into full compliance with applicable provisions of these requirements.

Procedures for Initial Licensure

2.15 An applicant shall apply for an initial license on a form provided and in a manner prescribed by the Division

2.16 Upon receipt of a completed application, a Division representative shall:

- a. Provide assistance to aid the applicant in complying with applicable provisions of these requirements;
- b. Review the application, confer with the applicant, and inspect the facility or program to determine whether the applicant has fully complied with applicable

provisions of these requirements;

c. Make a recommendation to the Division regarding the issuance of a license. If a license is granted, the applicant shall initially be issued a provisional license for six months. A regular license shall be issued when the facility or program fully meets applicable provisions of these requirements; and

d. If a license is denied, notify the applicant in writing of the reason(s) for denial and set forth the applicant's rights to an appeal from the decision.

2.17 The expiration date of the first regular license and each subsequent renewal of a regular license shall be one year from the initial date of issuance.

Procedures for License Renewal

2.18 A licensee shall submit a written request to the Division to seek a license renewal application form at least 90 calendar days before the expiration date of the facility's or program's regular license.

2.19 A licensee shall submit a completed application for a regular license renewal to the Division at least 60 calendar days before expiration of its current regular license.

2.20 When a licensee makes timely and sufficient application for renewal of a regular license, the existing license shall not expire until a decision on the renewal application is made by the Division.

2.21 A provisional license may be renewed when the Division determines that a licensee has demonstrated good faith efforts to achieve compliance but requires additional time to achieve full compliance with applicable provisions of these requirements.

Terms of a License

2.22 The license shall contain the following:

- a. Status of the license: regular, provisional or extension;
- b. Effective date of the license;
- c. Expiration date of the license;
- d. The maximum number of children who may be served at one time; and
- e. The applicable type of regulated service for which authorization to operate has been granted.

2.23 A licensee shall operate a facility or program within the terms of its license.

Changes Affecting License

2.24 The Division shall determine whether to modify a current license or to require the licensee to submit an application for a new license when any of the following changes occur:

- a. A change of ownership or sponsorship;
- b. A change of location;
- c. A change in the name of the facility or program;
- d. A change in the applicable type of regulated service authorized; or
- e. A change in child population capacity.

Denial, Revocation or Refusing to Renew a License

2.25 The Division may deny, revoke or refuse to renew a license for good cause, including but not limited to the following:

- a. Substantial or willful failure to comply with applicable provisions of State law(s) or of these requirements;
- b. Violation of the terms or conditions of its license;
- c. Fraud or misrepresentation of facts in obtaining a license; or
- d. Engaging in any activity, policy, practice or employee conduct that adversely affects or is deemed by the Division to be detrimental to the education, health, safety, treatment needs or well-being of children, or that otherwise demonstrates unfitness by the chief administrator or by any employees to operate a facility or program.

Appeal

2.26 If the Division denies, revokes, or refuses to renew a license, the Division shall notify the applicant or licensee in writing at least 10 consecutive calendar days prior to taking such action, and shall specify the applicant's or licensee's entitlement to appeal from the decision and to request an administrative hearing.

2.27 The Division shall notify the applicant or licensee in writing of the findings of its investigation and of the reasons for the denial, revocation or refusal to renew a license, before taking such action.

2.28 If a written or verbal request for a hearing is received by the Division within the 10-calendar-day period, the Division shall ensure that a hearing is held within 30 consecutive calendar days from the date the request is received.

2.29 The hearing officer shall have had no previous involvement in the matter prompting the hearing.

2.30 If a licensee files an appeal in a timely manner, its existing license shall remain in effect until an official written decision has been rendered subsequent to the hearing, except that the Division shall have the authority to suspend the license immediately whenever the health, safety or well-being of children in care is in imminent danger or jeopardy.

2.31 If an applicant or licensee does not file an appeal from the decision and does not request a hearing, the action to revoke, deny or refuse to renew a license shall take effect 30 consecutive calendar days after the receipt of the notice. However, if the health or safety of children in care is in jeopardy, the modification, revocation, denial or refusal to renew shall be effective immediately upon the issuance of a written notice by the Division.

Order to Suspend a License

2.32 If the health, safety or well-being of children in care is in jeopardy or imminent danger, the Division may immediately suspend the license upon issuance of a written suspension order. The order shall state the reason(s) for the suspension. Within 10 consecutive calendar days of the issuance of the suspension order the Division Director, or his or her designee shall hold a conference with the licensee or his or her representative(s).

Rule Variance

2.33 Upon the written request of an applicant or a licensee, the Division may grant a variance from any of these requirements if the licensee has documented to the satisfaction of the Division that the intent of the specific requirement will be satisfactorily achieved in a manner other than that prescribed by the requirement.

2.34 The Division shall render its decision on the request in writing, including the conditions for which the variance is granted, and shall send a signed copy of the decision to the applicant or licensee. A copy of the decision shall be maintained on file by the Division and the licensee.

2.35 The variance may be time-limited or may remain in effect for as long as the licensee continues to maintain the health, care, safety, protection, supervision, and needed services of children.

2.36 The Division shall monitor the licensee's compliance with the variance. If the licensee fails to comply with the variance, the Division shall initiate necessary enforcement action.

CHAPTER 3. GENERAL PROVISIONS

Part I. Administration

Notification of Changes

3.01 A licensee shall notify the Division in writing at least 90 consecutive calendar days before any of the following changes occur:

- a. A change of ownership or sponsorship;
- b. A change of location;
- c. A change in the name of the facility or program;
- d. A change in the applicable type of regulated service being provided;
- e. A change in child population capacity; or
- f. The anticipated closing of the facility or program.

Governing Body

3.02 A licensee shall have an identifiable functioning governing body. The governing body shall designate a person to function as the chief administrator of the facility or program.

Chief Administrator Responsibilities

3.03 A licensee shall delineate in writing the job responsibilities and functions of the chief administrator. The chief administrator shall adopt and implement a chain of command that ensures the proper and effective supervision and monitoring of employees and volunteers.

Facility or Program Description of Services

3.04 A licensee shall develop, adopt, follow and maintain on file a current written description of the facility's or program's:

- a. Admission policies governing the age, specific characteristics, and treatment or service needs of children accepted for care; and
- b. Services provided to children and their families, including those provided directly by the licensee or arranged through another source.

3.05 A licensee shall make available to the public a brochure or other generic written description of its mission, policies and the types of services offered by the facility or program.

Maintenance of Children's Records

3.06 A licensee shall develop, adopt, follow and

maintain on file on the premises written procedures governing the maintenance and security of records of children in care. These procedures shall:

- a. Assure that records are stored in a secure manner; and
- b. Assure confidentiality of and prevent unauthorized access to such records.

Administrative Records

3.07 A licensee shall develop, adopt, follow and maintain on file on the premises up-to-date administrative records containing the following:

- a. Organizational chart;
- b. Name and position of persons authorized to sign agreements and to submit official documentation to the appropriate government agency; and
- c. Written standard operating procedures.

Insurance Coverage

3.08 A licensee shall secure and maintain on file written documentation of appropriate motor vehicle, fire and comprehensive general liability insurance, as required by State law(s).

Fund Raising and Publicity

3.09 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use of children in fund raising or publicity activities. Such policies shall ensure that any involvement of a child in such activities respects the child's dignity, preserves his or her confidentiality and has been authorized by the child's parent(s) or legal guardian in a signed parental consent statement.

Research

3.10 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the participation of children in bona fide research projects, which shall embrace the following criteria:

- a. The goal(s) of the research are sound, achievable, and feasible;
- b. The research design is scientifically valid and appropriate to the goal(s) of the research; and
- c. The results of the proposed research will contribute significantly to the body of existing information on the subject.

3.11 The policies and procedures governing approved research projects shall:

- a. Safeguard the privacy and protect the identity of

and confidential information about children participating in research or follow-up studies;

- b. Preserve the confidentiality of children and their families;
- c. Ensure that the child's participation in the approved research project is voluntary; and
- d. Ensure that the parent(s) or legal guardian of a child participating in the research project has signed an informed consent statement, which the licensee shall maintain on file.

Part II . Personnel

Personnel Policies and Procedures

3.12 A licensee shall develop, adopt, follow and maintain on file written personnel policies and procedures governing the recruitment, screening, hiring, supervision, training, evaluation, promotion, and disciplining of employees and volunteers.

Personnel; General Qualifications

3.13 A licensee shall employ only those persons who:

- a. Have an understanding of and respect for children and their needs and have an understanding of and respect for a child's family and culture; and

- b. Are physically and emotionally capable of performing activities related to providing child care, which include the ability to supervise children's activities, to support children's physical, intellectual, social and emotional growth, to deal with emergencies in a calm manner, and to carry out methods of behavior management, as stipulated in these requirements.

Grandparent Provision

3.14 An employee who was approved in accordance with personnel qualification requirements in existence prior to the date on which these requirements became effective shall be deemed qualified for the same position at that facility or program.

Chief Administrator Qualifications

3.15 A chief administrator, at the time of appointment, shall be at least 21 years of age and shall possess one of the following:

- a. A master's degree in social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, a human behavioral science, public administration or a related field, and three years of full-time work experience in child welfare, human services or a related field, at least two years of

which shall have been in an administrative or supervisory capacity; or

b. A bachelor's degree in social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, a human behavioral science, public administration or a related field, and four years of post-bachelor's degree full-time work experience in child welfare, human services or a related field, at least two years of which shall have been in an administrative or supervisory capacity.

Direct Care Supervisor Qualifications

3.16 A direct care supervisor, at the time of appointment, shall be at least 21 years of age and shall possess at least one of the following:

a. A bachelor's degree and one year of full-time work experience in a child care facility or program;

b. Two years of college education and two years of full-time work experience in a child care facility or program; or

c. A high school diploma or equivalent and three years of full-time work experience in a child care facility or program.

Direct Care Worker Qualifications

3.17 A direct care worker, at the time of appointment, shall be at least 21 years of age and shall possess a high school diploma or an equivalent.

Service Supervisor Qualifications

3.18 A service supervisor, at the time of appointment, shall be at least 21 years of age and shall possess at least one of the following:

a. A master's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, human behavioral science or a related field and at least two years of full-time work experience in child welfare, social work, human services, teaching, counseling or a related field, at least one year of which shall have been in a supervisory capacity; or

b. A bachelor's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, human behavioral science or a related field and at least four years of full-time work experience in child welfare, social work, human services, teaching, counseling or a related field, at least two years of which shall have been in a supervisory capacity.

Service Worker Qualifications

3.19 A service worker, at the time of appointment,

shall be at least 21 years of age and shall possess a bachelor's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, a human behavioral science or a related field and at least two years of full-time work experience in child welfare, human services, teaching, counseling or a related field.

Administrative Oversight and Supervisor-to-Staff Ratios

3.20 The chief administrator shall ensure that there are a sufficient number of administrative, supervisory, social service, educational, recreational, direct care, and support employees or volunteers to perform the functions prescribed by these requirements and to provide for the care, needs, protection and supervision of children. The ratio of direct care workers to children during off-grounds activities or excursions shall be the same as the ratios of direct care workers to children that are required during on-grounds activities.

3.21 A licensee shall have either:

a. A full-time chief administrator; or

b. If its licensed capacity is fewer than 13 children, a part-time chief administrator and a full-time service supervisor.

3.22 A licensee shall ensure that a designated employee is in charge on the premises at all times when children are present.

3.23 A licensee shall have a ratio of one service supervisor for every ten service workers or fraction thereof. A full-time chief administrator may also serve as the service supervisor when there are three or fewer service workers.

3.24 A licensee shall have a ratio of one direct care supervisor for every ten direct care workers or fraction thereof. A full-time chief administrator may also serve as the direct care supervisor when there are three or fewer direct care workers.

Orientation and Training of Employees and Volunteers

3.25 A licensee shall ensure that all new employees and volunteers participate in an orientation that includes the purpose, policies and procedures of the facility or program, the employee's role and responsibilities and the requirements to report allegations of child abuse or neglect.

3.26 A licensee shall ensure that each new employee, volunteer, or any current employee or volunteer whose job function changes, and whose primary role or function

requires interaction with children, receives at least 15 hours of planned training preceding the assumption of his or her work assignment on an independent basis. The training shall include instruction in:

- a. Carrying out job responsibilities;
- b. The licensee's purpose, policies and procedures, including those governing behavior management, crisis management and safety;
- c. Emergency procedures and the location of emergency exits and emergency equipment, including first aid kits;
- d. The role of employees and volunteers in client service delivery and the protection of children;
- e. The Delaware child abuse and neglect law(s) and regulations; and
- f. The provisions of these licensing requirements.

This requirement shall not apply to licensed professionals under contract with the licensee.

3.27 A licensee shall ensure that each employee and volunteer whose primary role or function requires interaction with children and who works 24 or more hours a week receives at least 40 hours of training annually, including the 15 hours of training provided pursuant to rule 3.26. This training shall cover subject matters designed to maintain, improve or enhance the employee's knowledge of or skills in carrying out his or her job responsibilities, including:

- a. Instruction in administering cardiopulmonary resuscitation (CPR) and first aid, including the location of first aid kits. A licensee providing care to children below six years of age shall include training in pediatric first aid and pediatric CPR;
- b. cardiopulmonary resuscitation;
- c. Cultural sensitivity; and
- d. Behavior management policies and procedures.

3.28 A licensee shall ensure that any employee or volunteer whose primary role or function requires interaction with children and who works fewer than 24 hours a week receives at least 20 hours of training annually, including the 15 hours of training provided pursuant to Requirement 3.26. The five hours of training not related to Requirement 3.26 shall be in subject matters identified in Requirement 3.27.

3.29 The licensee shall permit licensed professional employees, such as physicians, psychologists, and nurses, to apply hours of continuing education units (CEUs) earned each year towards the hourly requirements specified in Requirements 3.27 and 3.28. A licensee shall maintain on file written documentation of compliance with this requirement.

3.30 A licensee shall maintain on file written materials documenting the delivery of orientation and training for all employees and volunteers.

Personnel Records

3.31 A licensee shall develop, adopt and maintain on file a personnel record for every employee and volunteer.

3.32 The personnel record shall contain the following:

- a. Employment application;
- b. Name, address and phone number of the employee;

- c. Verification of education where specified by these requirements;
- d. Documentation of training received prior to and during employment at the facility or program;

- e. Work history;
- f. Three references from persons who are unrelated to the employee or volunteer, one of which shall be from any previous employer;

- g. For job applicants who have worked with an agency that provides care or services to children, one of the three references required in Requirement 3.32. f. shall be from the prior child care employer;

- h. Any health verification, as specified in Requirements 3.150 and 3.151;

- i. Verification of completed criminal history record information check and child abuse registry information check;

- j. Verification of receipt by the employee or volunteer of his or her current job description;

- k. An annual employee performance evaluation; and

- l. Employee disciplinary actions and history.

Job Descriptions for Employees

3.33 A licensee shall maintain on file a current written job description for every employee and for every volunteer who works more than 24 hours a week.

3.34 A licensee shall ensure that an employee's and volunteer's permanent or temporary assignment and functions shall be consistent with his or her respective current written job description.

Use of Volunteers

3.35 A licensee shall develop, adopt, follow and maintain on file policies and procedures governing the qualifications and use of volunteers. The qualifications shall be appropriate to the duties they perform.

3.36 A licensee shall assign designated employees to supervise volunteers.

Child Abuse and Neglect

3.37 A licensee shall provide each employee or volunteer who has contact with children written information governing the reporting provisions of the Delaware child abuse and neglect law(s) and regulations, and shall maintain on file written documentation of their receipt of this information.

3.38 A licensee shall not discourage, inhibit, penalize or otherwise impede any employee or volunteer from reporting any suspected or alleged incident of child abuse or neglect.

3.39. A licensee shall develop, adopt, follow and maintain on file written policies and procedures for handling any incident of suspected child abuse or neglect. The policies and procedures shall contain provisions specifying that:

- a. The licensee immediately shall take appropriate remedial action to protect children from harm;
- b. The licensee shall take appropriate long-term corrective action to eliminate the factors or circumstances that may have caused or may have otherwise resulted in a continuing risk of abuse or neglect to children;
- c. Any employee or volunteer involved in an incident of alleged child abuse or neglect shall be removed or suspended from having direct contact with any child, or shall be reassigned to other duties that do not involve having contact with children until the investigation of the incident has been completed;
- d. The licensee shall take appropriate disciplinary action against any employee or volunteer who committed an act of child abuse or neglect.

Part III. Children's Services and Activities

Admission

3.40 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing a child's admission to a facility or program. The policies and procedures shall be made available to those persons considering admission of a child to a facility or program and shall include:

- a. Age range of children served;
- b. Gender of children served;
- c. Presenting problems and treatment needs of children served;
- d. Materials, documents and reports required, including a child's social, education, medical evaluation

and histories;

e. A description of the types of treatment services provided; and

f. The identifying information about a child to be recorded at the time of admission or as a part of the pre-admission process. Such information shall include the child's name, birth date, gender, religious preferences, race or ethnicity, names, addresses, telephone numbers of parent(s) or legal guardian, other service workers or contact persons, the referring agency, if applicable, known medical history and allergies, date of admission, and a brief social history, including the presenting problems.

3.41 When a licensee refuses the admission of a child, the licensee shall provide the child's parent(s), legal guardian and the referring agency with a written explanation of the reasons for refusal, if requested.

3.42 A licensee shall ensure that the child, his or her parent(s), legal guardian, and the referring agency and any other appropriate party, are provided a reasonable opportunity to participate in the facility's or program's admission process.

3.43 Where involvement of the child's parent in the admission process is neither possible nor desirable, the licensee shall record the reasons for exclusion in the admission records.

3.44 A licensee shall not admit a child into care until an admission evaluation has been completed.

3.45 In an emergency admission, a licensee shall complete Requirements 3.42, 3.43 and 3.44 within five consecutive business days.

3.46 A licensee shall develop, adopt, follow and maintain on file a written admission agreement with the parent(s), legal guardian or the referring agency. The admission agreement shall be signed by all parties and include:

- a. The basis for admission;
- b. The service or treatment goals;
- c. The specific services or treatment to be provide;
- d. The religious orientation and practices of the child;
- e. The roles and responsibilities of the licensee and all persons and agencies involved with the child and his or her family;
- f. Authorization to provide services to the child;
- g. Authorization to provide or obtain routine medical care for the child;
- h. Authorization to provide emergency medical or

surgical care for the child; and

i. Authorization to enable the child to participate in recreational and out-of-state activities.

Information Provided to Children and Their Parents

3.47 A licensee shall provide to children and their parent(s) or legal guardian, or upon request to the referring agency the following:

- a. Operational rules of the facility or program;
- b. Policies governing visiting, telephone use, and other forms of communication with family, friends, and other persons important to the child;
- c. Religious orientation and practices observed by the licensee;
- d. A description of services and activities provided;
- e. A description of the licensee's behavior management policies and procedures;
- f. Grievance policies and procedures;
- g. Name of the child's service worker;
- h. Information on how to obtain a copy of these requirements, and on reporting any suspected violations of these requirements; and
- i. The child's service plan.

Service Plan

3.48 A licensee shall develop, adopt, follow and maintain on file a written service plan for each child admitted into a facility or program.

3.49 A licensee shall complete the service plan within 30 consecutive calendar days of a child's admission and shall update the plan at least every 90 consecutive calendar days thereafter.

3.50 A licensee shall afford the child, his or her parent(s) or legal guardian, and the referring agency an opportunity to be involved in the development of the service plan unless there is written documentation justifying the non-participation of any such parties.

Permission to Have Contact with Designated Persons

3.51 A licensee shall allow a child's parent(s) or legal guardian, attorney, clergy, authorized representative of the referring agency, or a Division representative, to be permitted to have telephone, mail and in-person contact and to confer in private with any child.

Education

3.52 A licensee shall ensure that each school-age child receives an appropriate education, in accordance with

applicable federal and State law(s) and regulations. Education shall be provided either in a public or private school, or in an approved on-grounds school operated by the licensee.

3.53 A licensee shall ensure that every school-age child attends either an on-grounds or community-based educational program that has been approved by the appropriate Delaware authorities.

3.54 If a licensee chooses to provide an educational program directly, the licensee shall ensure that such educational programs comply with the following:

- a. Teachers shall possess valid teaching certificates appropriate to the age of the children they teach;
- b. The educational program operates on at least as many calendar days and clock hours as are required by State law(s) and regulations;
- c. A core curriculum that is appropriate to the population to be served is followed;
- d. Special education services are provided or arranged by the licensee for each child whose special education needs have been identified and as appropriate in collaboration with the child's school district; and
- e. Appropriate written records shall be maintained on file for each child that reflect the use of a uniform grading system and a process for transfer and release of these records to and from other schools or facilities.

3.55 If a licensee chooses not to provide an educational program directly, the licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the assignment of any child to an educational program.

3.56 A licensee shall provide appropriate space and supervision for quiet study after school hours.

3.57 A licensee shall ensure the each child has access to necessary educational references and other resource materials.

3.58 A licensee shall ensure that adolescent children receive career preparation services, life skills training, and employment counseling unless such services, training and counseling are being provided in their regular or special education school program. Such services, training and counseling shall be appropriate to the age and capabilities of the child.

Work and Employment

3.59 A licensee shall not engage a child in any work assignment unless the assignment offers the child a

constructive experience, in accordance with the child's age, capabilities and service plan.

3.60 For any adolescent who is legally not obliged to attend school, a licensee shall ensure that the child is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills appropriate to the child's level of functioning.

Children's Recreation, Physical Exercise and Leisure Time Activities

3.61 A licensee shall develop, adopt, follow and maintain on file written policies and procedures ensuring developmentally appropriate recreation, physical exercise and leisure time activities both on and off the premises, including planned trips and excursions. The policies and procedures shall contain provisions requiring:

- a. A list of the types of activities to be offered to children both on and off the premises;
- b. A balanced mixture of planned recreation, physical exercise and leisure time activities, so that children have a reasonable choice of alternatives in which to participate;
- c. Opportunities for both individual and group activities; and
- d. A written schedule of monthly planned recreation, physical exercise and leisure time activities be developed and posted in a conspicuous and readily accessible location on the premises, and be maintained on file for at least 90 consecutive calendar days.

3.62 A licensee shall ensure that reasonable precautions and safeguards are utilized to prevent or minimize the risk of serious injury or harm to children.

3.63 A licensee shall ensure that children utilize only bathing, biking, boating, camping, canoeing, hiking, kayaking, sailing, swimming, water skiing, white water rafting or other sporting or recreation areas or facilities that are in compliance with applicable provisions of federal, state, county and municipal law(s), regulations and ordinances.

3.64 A licensee shall not threaten, coerce or intimidate a child to participate or engage in any recreation, physical exercise or leisure time activity, but may require a child to attend while not participating in the activity.

3.65 A licensee shall ensure that staff provide adequate and appropriate supervision of children engaging in recreation, physical exercise or leisure time activities and shall offer instruction, guidance and support

to assist a child in learning to do so in a safe manner.

3.66 A licensee shall not permit children to engage or participate in high-risk activities unless:

- a. the licensee complies with applicable provisions governing such activities, as specified in Chapter 10; or
- b. The licensee utilizes an existing high adventure activity provider that is certified or approved by an appropriate governmental or private accrediting agency and that assumes responsibility for safety precautions and risk reductions.

3.67 A licensee shall prohibit children from participating in bungee jumping, hang gliding, parachute jumping, parasailing, and riding in airborne gliders.

Religion and Culture

3.68 A licensee shall respect the religious preference of the child and his or her parent(s) or legal guardian.

3.69 A licensee shall ensure that each child is afforded opportunities to attend religious services or activities in his or her religious faith of choice. A licensee shall directly arrange for or ensure that other reasonable means are provided for the transportation of a child to services or activities that are off site.

3.70 A licensee that has a particular religious or denominational orientation shall provide a written description of its orientation or beliefs to the child and to the child's parent(s) or legal guardian prior to the child's admission, or within seven consecutive calendar days following the admission of the child.

3.71 A licensee shall not require or coerce children to participate in religious services or activities, shall not discipline, discriminate against, or deny privileges to any child who chooses not to participate, and shall not reward any child who chooses to participate.

3.72 A licensee shall recognize and take into account the racial, cultural, ethnic and religious backgrounds of children when planning various activities or religious services.

Behavior Management

3.73 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the behavior management of children. The policies and procedures shall delineate the approved methods of behavior management techniques that are to be used to assist children in developing self control, self

direction, self esteem, and acceptable patterns of social behavior. The policies and procedures shall include the concepts and application of least restrictive treatment and positive reinforcements. The policies and procedures shall prohibit:

- a. The delegation of responsibility for the control or supervision of children to other children;
- b. The use of corporal punishment or the threat of corporal punishment inflicted in any way on a child's body, including but not limited to shaking, biting, pinching, slapping, hitting or spanking;
- c. The use of any form of forced physical exercise or activity or work assignment that produces pain or discomfort;
- d. The use of verbal abuse, including humiliation, profanity, ridicule, or other forms of degradation;
- e. The withholding of any meal;
- f. The use of group punishments for misbehaviors of a child or a group of children unless the policies and procedures clearly prescribe the specific circumstances and safeguards under which such would be authorized;
- g. The denial of essential services, including medical or dental care;
- h. The denial of visits or communications with family;
- i. The denial of shelter, appropriate clothing, bedding, or any other essential personal needs;
- j. The denial of access to a toilet or bathing accommodations;
- k. The denial of access to a telephone;
- l. The use of excessive force or inappropriate physical force;
- m. The use of restrictive procedures unless authorized by the Division and in compliance with the requirements of Chapter 9;
- n. The exploitation of a child; and
- o. The denial of sleep or needed rest.

3.74 A licensee shall disseminate copies of the behavior management policies and procedures to all employees and children within 10 consecutive calendar days of employment or admission, respectively, and shall make copies available to the parent(s), legal guardian or the referring agency.

3.75 A licensee shall ensure that all employees and volunteers who have regular contact with children receive a copy of the policies and procedures.

Documentation Requirements

3.76 A licensee shall develop, adopt, follow and maintain on written file policies and procedures governing the accurate and timely recording of each

incident in which a time-out technique or a non-violent physical intervention strategy is used. Such policies and procedures shall ensure that the identity of the child, the date, time, place, and circumstances of, and the name of the employee or volunteer who administered the time-out technique or the non-violent physical intervention strategy is recorded. The nature of the technique or strategy and the elapsed time used shall also be recorded.

3.77 A licensee shall ensure that the chief administrator or his or her designee reviews the documentation on a weekly basis.

Time-Out Techniques

3.78 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use of appropriate time-out techniques. The policies and procedures shall require that appropriate time-out techniques may be used only:

- a. For a child six years of age or older, except as noted in Requirement 3.80;
- b. When a child's behavior is judged by the employee to be disruptive to the child's ability to learn from the activity, to participate appropriately in the activity, or to function appropriately with other children engaged in an activity; and
- c. For a duration of time that shall not exceed 60 consecutive minutes. If there are more than 25 time-outs for an individual child or a cumulative total of four hours spent in time-out within any consecutive 24-hour period, a licensee shall ensure that:
 1. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement in the facility or program, or whether modifications to the child's service plan are warranted; and
 2. Appropriate action is taken in response to the findings of the review.

3.79 A licensee shall ensure that:

- a. At least one employee has been designated to be responsible for making visual contact with the child every 30 consecutive minutes;
- b. The child does not spend the time-out period in a closet, a bathroom or an unfinished basement or attic; and
- c. The child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

3.80 A licensee shall ensure that any use of a Time-Out Technique for a child below six years of age is:

- a. Limited to a period of time not to exceed one minute for each year of the child's age; and

b. Employed as a supplement to, not a substitute for, other developmentally appropriate, positive methods of behavior management.

Non-Violent Physical Intervention Strategies

3.81 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the appropriate use of non-violent physical intervention strategies. These policies and procedures shall require that non-violent physical intervention strategies may be used only:

- a. When a child is out of control and could physically harm himself or herself or others;
- b. To prevent the destruction of property when the child fails to respond to non-physical behavior management interventions;
- c. For a duration of time that shall not exceed 15 consecutive minutes, without written documentation on attempts made to release the child from the hold if more than 15 minutes is required. A licensee shall ensure that a child is released from a physical intervention strategy as soon as he or she gains control, or before 15 consecutive minutes have elapsed, whichever occurs first; and
- d. By employees or volunteers who have been specifically trained in its use and authorized to apply such strategies.

3.82 A licensee shall not permit the application of a non-violent physical intervention strategy if a child has a documented physical condition that would contraindicate its use, unless a licensed physician has previously and specifically authorized its use in writing. Such documentation shall be maintained on file.

3.83 Whenever the provisions of Requirement 3.81 have been exceeded, a licensee shall ensure that:

- a. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement in the facility or program, or whether modifications to the child's service plan are warranted;
- b. Written documentation of the review is forwarded to the Division; and
- c. Appropriate action is taken in response to the findings of the review.

3.84 A licensee shall prohibit employees from intentionally utilizing any of the following practices:

- a. Pulling a child's hair;
- b. Pinching a child's skin;
- c. Twisting a child's arm or leg in a way that would cause pain or injury to the child;
- d. Kneeling or sitting on the chest of a child;

- e. Placing a choke hold on a child;
- f. Bending back a child's finger(s);
- g. Shoving or pushing a child into the wall, floor or other stationary object; or
- h. Allowing another child or other children to assist in the application of a physical intervention strategy.

Children's Grievance Procedure

3.85 A license shall develop, adopt, follow and maintain on file written policies and procedures governing the handling of grievances by children. The policies and procedures shall:

- a. Be written in clear and simple language;
- b. Be communicated to children in an age or developmentally appropriate manner;
- c. Be posted in an area easily accessible to children and their parent(s) and legal guardian;
- d. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and
- e. Require continuous monitoring by the licensee of any grievance to assure there is no retaliation against the child.

3.86 A licensee shall not take or threaten to take any punitive or other retaliatory action against a child who utilizes the grievance procedure.

Part IV. Physical Plant

Premises and Equipment

3.87 A licensee shall ensure that the facility's or program's premises and equipment accessible to or used by children are free from any danger to their health, safety and well-being.

3.88 A licensee shall maintain on file written documentation that the buildings and premises of the facility or program conform to all applicable State and local fire, health and construction laws, ordinances and regulations.

3.89 A licensee shall ensure that porches, elevated walkways and elevated play areas of more than two feet in height shall have barriers to prevent falls.

3.90 A licensee shall ensure that all indoor and outdoor areas, toilets, wash basins, tubs, sinks, and showers are maintained in an operable, safe and sanitary manner.

3.91 A licensee shall utilize approved products and

procedures in accordance with labeled instructions to ensure that the premises are protected from insect infestation.

3.92 A licensee shall ensure that all premises used by children are rodent free.

Kitchen and Food Storage

3.93 A licensee shall ensure that kitchens are provided with the necessary operable equipment for the preparation, storage, serving and clean-up of all meals for all of the children and employees regularly served by such kitchens. A licensee that does not prepare food on the premises and that utilizes single-service (disposable) dishes, pots, pans and utensils shall not be governed by this Requirement and Requirements 3.94, 3.95, 3.98, 3.100 and 3.102.

3.94 A licensee with a licensed capacity of 12 or fewer children shall ensure that:

- a. A mechanical dishwasher is used; or
- b. Dishes, pots, pans and utensils are manually washed and rinsed after each meal in a sanitary manner using a two-compartment sink. When dishes, pots, pans and utensils are manually washed, a chlorinated detergent is used; and dishes, pots, pans and utensils, are immersed in warm water for a duration of time that is at least one minute. The water is to contain a sanitizing solution that is self-made, consisting of one teaspoon of household bleach to one gallon of water, or an appropriate commercial sanitizing solution that is used in accordance with labeled instructions.
- c. All dishes, pots, pans and utensils are air dried.

3.95 A licensee with a licensed capacity of 13 or more children shall ensure that:

- a. A mechanical dishwasher is used for the cleaning and sanitizing of all dishes, pots, pans and utensils after each meal; and
- b. The dishwasher is capable of sanitizing at the proper time, temperature and pressure ratio, and that dishes, pots, pans and utensils are washed in accordance with manufacturer's instructions.

3.96 A licensee shall ensure that all food service equipment and utensils are constructed of material that is nontoxic, easily cleanable and maintained in good repair.

3.97 A licensee shall ensure that all food services equipment, eating and drinking utensils, counter-tops and other food contact areas are thoroughly cleaned and sanitized after each use.

3.98 A licensee shall ensure that a kitchen or food preparation area has a hand washing sink within the food preparation area and separate from the sink used for food preparation and dish washing.

3.99 A licensee shall ensure that the floor, walls and counter-top surfaces of the kitchen are made of cleanable materials and impervious to water to the level of splash.

3.100 A licensee shall ensure that the kitchen has a cook stove and oven with an appropriately vented hood that is maintained in a safe and operable condition.

3.101 A licensee shall ensure that the kitchen is so constructed or supervised as to limit access by children when necessary.

3.102 A licensee shall ensure that food preparation areas and appliances, dishes, pots, pans, and utensils in which food was prepared or served are cleaned following each meal.

3.103 A licensee shall ensure that all potentially hazardous foods are stored at temperatures that will protect against spoilage. This means that:

- a. All refrigerated foods are to be kept cold at 40 degrees Fahrenheit or below.
- b. All frozen foods are to be kept at 0 degrees Fahrenheit or below.
- c. All hot foods are to be kept at 140 degrees Fahrenheit or above, except during periods that are necessary for preparation and serving.
- d. Refrigerators and freezers shall be equipped with approved thermometers.

3.104 A licensee shall ensure that:

- a. All food storage areas are clean, dry and free of food particles, dust and dirt;
- b. All packaged food items and can goods are stored at least six inches above the floor in sealed or closed containers that are labeled; and
- c. All dishes, pots, pans and utensils are stored in a clean and dry place.

Water Supply and Sewage Disposal

3.105 A licensee shall maintain on file written documentation that the building's water supply and sewage disposal system are in compliance with applicable State laws and regulations of the Delaware Division of Public Health and the Delaware Department of Natural Resources and Environmental Control, respectively.

3.106 A licensee shall ensure that hot tap water does not

exceed 120 degrees Fahrenheit at all outlets accessible to children, and that cold or tempered water are also provided.

Garbage and Refuse

3.107 A licensee shall ensure that:

- a. Garbage is stored in watertight containers with tight-fitting covers that are insect and rodent proof;
- b. Garbage and refuse are removed from the premises at intervals of at least once a week; and
- c. Garbage and refuse are contained in an area that is separate from any outdoor recreation areas.

Lighting

3.108 A licensee shall ensure that kitchens and all rooms used by children, including bedrooms, dining rooms, recreation rooms and classrooms, are suitably lighted for safety and comfort, with a minimum of 30 foot candles of light. All other areas shall have a minimum of 10 foot candles of light.

3.109 A licensee shall ensure that all lights located over, by or within food preparation, serving and storage areas shall have safety shields or light covers.

3.110 A licensee shall ensure that all corridors are illuminated during night-time hours.

3.111 During night-time hours, a licensee shall provide for exterior lighting of the building(s), parking areas, pedestrian walkways or other premises subject to use by children, employees and volunteers.

Heating

3.112 A licensee shall ensure that a minimum temperature of 68 degrees Fahrenheit is maintained at floor level in all rooms occupied by children.

3.113 A licensee shall ensure that all working fireplaces, pipes, and electric space heaters accessible to children are protected by screens, guards, insulation or any other suitable, non-combustible protective device. All radiators accessible to children below six years of age shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device.

3.114 Portable fuel burning or wood burning heating appliance shall be prohibited.

Lead Paint and Asbestos

3.115 A licensee shall not use lead paint on the interior or exterior surfaces of any building used by children or on any furniture, toys or other equipment used by children.

3.116 A licensee that accepts children who are under six years of age, mentally retarded or severely emotionally disturbed shall ensure that the premises are free of lead paint hazards and shall maintain on file documentation that the premises have been tested and found to be free from lead paint hazards.

3.117 A licensee shall not use spray coatings containing asbestos on any interior or exterior portion of buildings or on any equipment used therein.

Toilet and Bathing

3.118 A licensee shall ensure that toilets, showers, sinks, and bathing facilities and other toilet accessories are provided for children and:

- a. Allow for individual privacy unless this privacy is in conflict with toilet training or needed supervision; and
- b. Are maintained in a safe and sanitary manner.

3.119 A licensee shall ensure that bathroom surfaces subject to splash shall be cleanable and impervious to water.

3.120 A licensee shall ensure that bathroom floors, showers, and bathtubs have slip-proof surfaces. Glass shower doors shall be marked for safety.

3.121 A licensee shall ensure that bathrooms are equipped with openable windows or mechanical ventilation systems to the outside.

Ventilation

3.122 A licensee shall ensure that each habitable room has direct outside ventilation by means of windows, louvers, air conditioning or mechanical ventilation.

3.123 A licensee shall ensure that:

- a. Each door, operable window and other opening to the outside is equipped with insect screening in good repair and not less than 16 mesh to the inch, unless the facility is air conditioned and provided that it does not conflict with applicable fire safety requirements; and
- b. This screening can be readily removed in emergencies.

3.124 A licensee shall ensure that ventilation outlets are

maintained in a clean and sanitary manner, and kept free from obstructions.

3.125 A licensee shall ensure that all floor or window fans accessible to children have a protective grill, screen or other protective covering.

Storage

3.126 A licensee shall provide areas with sufficient space for storing all supplies and equipment in a safe and sanitary manner.

3.127 A licensee shall ensure that all poisonous and toxic materials are stored in accordance with the following:

a. All poisonous and toxic materials shall be prominently and distinctly labeled for easy identification as to contents;

b. All poisonous and toxic materials shall be stored so as to not contaminate food or constitute a hazard to children, employees and volunteers;

c. All poisonous and toxic materials shall be stored in a secure and locked room with access only by authorized employees, except those products that are required for routine cleaning and maintenance; and

d. All flammable liquids, gasoline, or kerosene shall not be stored on the premises except in a manner and place that has been authorized in writing by the Office of the Fire Marshal.

Furnishings and Maintenance

3.128 A licensee shall ensure that buildings are furnished with comfortable, clean furniture in good repair and appropriate to the age, size and capabilities of children.

3.129 A licensee shall ensure that the premises are maintained and cleaned in a scheduled or routine manner.

3.130 A licensee shall ensure that all cleaning equipment, including mops and buckets, are cleaned and stored in an area separate and distinct from the kitchen and food preparation, serving and storage areas. Kitchen and bathroom sinks shall not be utilized for cleaning mops, emptying mop buckets, or for any other purpose not connected with food preparation or the cleaning of dishes, pots, pans and utensils.

Outdoor Recreation Area

3.131 A licensee shall maintain or have access to an outdoor recreation area with at least 50 square feet for

each child for the maximum number of children who will use the outdoor recreation area at one time.

3.132 When a licensee is not able to comply with Requirement 3.131, the licensee shall provide a minimum of 700 square feet of open, accessible indoor play space suitable for large muscle activity, group and individual sports conducive to indoor facilities and other forms of recreation activities.

3.133 A licensee shall ensure that all outdoor recreation areas are free from hazards and have adequate drainage.

3.134 A licensee shall ensure that all areas determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads or highways shall be fenced off or have a natural barrier to protect children.

3.135 A licensee shall ensure that its outdoor recreation program area has age-appropriate equipment for vigorous play, large muscle activity, physical exercise and group sports. Such equipment shall be maintained in a clean, safe, and operable condition and shall be free of hazards.

Swimming

3.136 A licensee that operates and utilizes an above-ground or in-ground swimming pool on its premises for use by children shall ensure that:

a. The pool fully complies with applicable swimming pool construction, sanitation, water purity, water temperature, recreational bathing and life saving provisions of federal, state, county and municipal law(s), regulations and ordinances;

b. The pool is maintained in a clean, safe, and sanitary manner;

c. At least one employee who has secured a valid lifesaving or life-guard certificate issued by an appropriate governmental or private certifying agency is assigned to monitor the pool whenever children are present;

d. The employee(s) assigned to monitor bathers and swimmers using the pool is located in a position out of the water where he or she can clearly observe all bathers and swimmers; and

e. The pool is secured and not utilized by children during night-time hours.

Access to Telephone

3.137 A licensee shall ensure that each building used by children has at least one working telephone that is directly available for immediate access or that is connected to an

operating central telephone system.

3.138 A licensee shall ensure that the licensee's telephone number is clearly posted and available to children, their parent(s) or legal guardian, and the general public.

3.139 A licensee shall provide children reasonable access to a pay or free telephone.

3.140 A licensee shall provide children reasonable privacy for telephone use.

3.141 A licensee shall not charge children for telephone calls to their Division case manager or the Department rights representative.

Emergency Procedures

3.142 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the handling of emergencies, including:

- a. Accident;
- b. Bomb threat;
- c. Fire;
- d. Flooding;
- e. Medical;
- f. Missing child;
- g. Power outage; or
- h. Severe weather conditions.

3.143 The policies and procedures shall include:

- a. An emergency evacuation plan;
- b. Instructions and telephone numbers for contacting ambulance, emergency medical response team, fire, hospital, poison control center, police, and other emergency services;
- c. Location and use of first aid kits; and
- d. Roster and telephone numbers of employees to be contacted during an emergency.

3.144 A licensee shall post its emergency evacuation plan and diagram depicting all exits in a conspicuous location on each floor of a building.

3.145 A licensee shall ensure that each newly admitted child is provided an orientation regarding emergency procedures and the location of all exits within 48 hours of admission.

Emergency Evacuation Drills

3.146 A licensee shall conduct at least four emergency evacuation drills annually and maintain on file a record of

each drill. Two of these drills shall include evacuations, unless the Division, in writing, has determined that an evacuation is clinically contraindicated. Where a licensee utilizes two or more employee shifts, there shall be at least four emergency evacuation drills conducted annually for each shift.

3.147 Emergency evacuation drills shall include all persons on the premises, including employees, volunteers, children and visitors.

Firearms and Other Weapons

3.148 A licensee shall prohibit the storage or use of any firearms or other weapons on the grounds of the facility or program or in any building used by children.

Power Equipment

3.149 A licensee shall ensure that power-driven equipment shall be appropriately shielded and maintained in good repair. Children shall be permitted to use such equipment only when it is age appropriate and only under the direct supervision of an employee.

Part V. Health

Employee and Volunteer Health

3.150 Prior to employing any person or accepting any volunteer, a licensee shall secure and maintain on file written documentation certifying and verifying that the prospective employee and volunteer has had a general physical examination within 12 months prior to the date of employment. The examination shall include a medically accepted procedure for screening for tuberculosis.

3.151 To be eligible to work in the facility or program, an employee or volunteer shall be:

- a. Free from tuberculosis; and
- b. Verified every three years thereafter as being free from tuberculosis.

3.152 If a licensee determines that the prospective employee or volunteer has not had a general physical examination within 12 consecutive calendar months prior to the anticipated date of employment or volunteer work, or if a licensee is unable to document that such an examination was completed, a licensee shall require the prospective employee or volunteer, as a condition of employment, to have such a general physical examination, as specified in Requirements 3.150 and 3.151, within three consecutive calendar months of the date of employment or volunteer work.

Child Health

3.153 A licensee shall secure from and maintain on file written documentation of each child's current immunizations, as required by the Delaware Division of Public Health.

3.154 If a licensee cannot obtain written documentation of immunization for a child, the licensee shall:

a. Coordinate with the child's parent(s), legal guardian, or referring agency for the provision of required immunizations; and

b. Ensure that the child is immunized within 30 consecutive calendar days of admission, unless a statement from a physician indicating that immunizations are contraindicated is included in the child's health record.

Child's Health Records

3.155 A licensee shall maintain on file a written health record for each child that includes information on:

- a. All available past medical history;
- b. Inventory and assessment of medications in use at the time of admission;
- c. All immunizations;
- d. All medications dispensed;
- e. Medical consents and releases of the child's parent(s) or legal guardian;
- f. All medical, dental, psychological or psychiatric examinations; and
- g. All medical treatment currently being provided.

3.156 A licensee shall ensure that child health records are available to employees for emergency use.

Administration or Assistance With Self-Administration of Medication

3.157 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use, administration or assistance with the self-administration of medications, prescription and non-prescription, to children. The policies and procedures shall:

- a. Identify those employees who may administer or assist with the self-administration of medications, in accordance with applicable State law(s) and regulations;
- b. Prohibit the administration of psychotropic medications unless a physician determines that such medication is clinically indicated;
- c. Prohibit the administration of psychotropic medications for disciplinary purposes, for the convenience

of an employee, or as a substitute for appropriate treatment services;

d. Require that an informed, written consent of the child's parent(s) or legal guardian is secured and maintained on file prior to the administration of any psychotropic medication;

e. Provide for a means of recording in writing the administration of all medications. Such records shall include the identity of the child, the date and time the medication was administered, and the identity of the employee who administered or assisted in the self-administration of the medication; and

f. Ensure that any known prescribed medication previously taken by a child is not changed, altered or failed to be dispensed without first consulting with a physician.

3.158 A licensee shall develop, adopt, follow and maintain on file a written schedule for each child receiving prescribed medications.

3.159 A licensee shall ensure that all medications are contained in the original container, properly labeled and stored in a secure locked area or as needed, in a locked refrigerated area. Keys to the secure area shall be safeguarded and kept out of the reach of children.

Handwashing

3.160 A licensee shall ensure that handwashing procedures follow the recommendations of the US Centers for Disease Control and Prevention to prevent the spread of illness. Hands shall be scrubbed for a minimum of 10 seconds using soap and warm running water.

3.161 A licensee shall ensure that employees and children wash their hands at least at the following times and whenever hands are contaminated with body fluids:

- a. Before any food service activity including food preparation, food serving, table setting and tableware handling;
- b. After toileting;
- c. After changing diapers;
- d. After assisting a child with toileting or nose wiping, or after cleaning from a child's having vomited;
- e. Before eating meals or snacks; or
- f. After handling pets or other animals.

3.162 A licensee shall ensure that soap and toilet paper are available at all times. Paper towels or individual clean cloth towels shall be available for each child. If cloth towels are used, a licensee shall ensure that they are washed or replaced daily.

3.163 A licensee shall ensure that rest equipment, cribs, beds, mats and bedding are age-appropriate and assigned to one individual child for his or her exclusive use. All bedding shall be cleaned weekly or when soiled or wet, and shall not be assigned to another child until it has been cleaned and sanitized.

Universal Precautions

3.164 A licensee shall employ universal precautions for protection from disease and infection. Spills of body fluids (i.e., blood, eye discharge, feces, injury or tissue discharges, nasal discharge, saliva, or urine) shall be cleaned up immediately, as follows:

a. Spills of vomit, urine, or feces on any surface including floors, walls, bathroom fixtures, table tops, furniture, diaper-changing tables, the area shall be cleaned and disinfected;

b. Spills of blood or blood-containing body fluids and injury and tissue discharges, the area shall be cleaned and disinfected. Nonporous disposable gloves shall be used in these situations unless the amount of blood or body fluids is so small that it can easily be contained by the material used for cleaning without coming into contact with the person doing the cleaning;

c. Persons involved in cleaning contaminated surfaces shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids and injury or tissue discharges by using nonporous disposable gloves to protect hands when cleaning contaminated surfaces;

d. Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie; and

e. Mops shall be cleaned, rinsed, disinfected, wrung dry and hung to dry.

Disinfectant Solution

3.165 A licensee shall use a disinfectant solution for disinfecting areas that have been contaminated by body fluids. The disinfectant solution shall be self-made consisting of one-fourth cup of household bleach to each gallon of water, which shall be prepared daily, labeled, and placed in a bottle or a plastic container that is sealed with a cap and stored out of reach of children.

Diapering and Sanitation

3.166 A licensee shall ensure that a diaper-changing area is:

a. Separate from food preparation and serving areas;

b. Easily accessible to a handwashing sink; and

c. Surfaces used for diaper-changing are non-absorbent and washable, and are disinfected between use by different children or protected by a disposable covering discarded after each use.

3.167 A licensee shall:

a. Use cloth diapers or disposable diapers;

b. Place non-disposable soiled diapers and training pants without rinsing into a separate leakproof plastic bag, labeled with the child's name, before transporting to a laundry or laundering;

c. Place soiled disposable diapers into a cleanable, covered container with a leakproof liner;

d. Use disposable towels, disposable wipes, or clean, reusable towels laundered between use for different children;

e. Immediately wash his or her hands after diapering or helping a child with toileting; and

f. Immediately wash the hands of a child after toileting.

3.168 A licensee shall use toilet training chairs only in an area separate from food preparation areas and in an area that ensures a child's privacy while permitting supervision.

3.169 A licensee shall disinfect toilet training equipment after each use.

Infant Care

3.170 A licensee shall ensure that feeding bottles, nipples, and pacifiers are cleaned and disinfected after each use or when dropped on the floor or ground.

3.171 A licensee shall ensure that toys that are mouthed by infants or children are cleaned and disinfected after each use and stored between use in a clean container.

Emergency Medical Services

3.172 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing medical emergencies. These policies and procedures shall require that at least:

a. One employee is on duty who is qualified to administer first aid and cardiopulmonary resuscitation; and

b. One fully equipped first aid kit is placed in each building used by children, and in any indoor recreation area.

First Aid Kit

3.173 A licensee shall ensure that first aid kits are readily available and contain the following:

- a. Nonporous disposable gloves;
- b. Scissors;
- c. Tweezers;
- d. Safety pins;
- e. Thermometer;
- f. Current American Academy of Pediatrics or American Red Cross first aid book or an equivalent first aid guide;
- g. Emergency telephone numbers;
- h. Self-adhesive bandages of various sizes;
- i. Bandage tape;
- j. Sterile gauze pads;
- k. Flexible roller gauze;
- l. Triangular bandages; and
- m. Antiseptic wipe.

Illness, Injury or Death

3.174 A licensee shall notify the child's parent(s) or legal guardian and the referring agency of any serious illness, incident involving serious bodily injury or any severe psychiatric episode of a child requiring hospitalization.

3.175 A licensee shall immediately notify the child's parent(s) or legal guardian and the referring agency, the Division and the medical examiner in the event of the death of a child.

Nutrition

3.176 A licensee shall ensure that all children are provided nutritionally balanced meals and snacks, and portions suitable to the size and age of the child in care, in accordance with the Recommended Dietary Allowances of the National Research Council or its equivalent.

3.177 A licensee shall ensure that a written menu is posted on a daily basis in a conspicuous location on the premises. Any change or substitution to the menu shall be noted and considered as part of the original menu. Menus shall be maintained on file and made accessible for review for at least six months.

3.178 A licensee shall ensure that meals and snacks are served in accordance with the following schedule based upon the number of hours that a child is present at the facility or program:

- a. Two to four hours - one snack;
- b. Four to six hours - one meal and one snack;
- c. Six to 10 hours - two meals and one snack;

or one meal and two snacks, based upon the arrival of the child; or

d. Ten hours or more - three meals and two snacks.

3.179 A licensee shall ensure that alternate meals and snacks are provided for children on special diets when prescribed by a physician.

Pets

3.180 A licensee shall ensure that animals or household pets are free from disease and cared for in a safe and sanitary manner.

3.181 A licensee shall secure and maintain on file written documentation of rabies and other vaccinations of pets, as required by State law(s), regulations or local ordinances.

Use of Alcohol, Tobacco and Illegal Drugs

3.182 A licensee shall prohibit all use of tobacco by employees, volunteers, children and visitors in any building used by children.

3.183 A licensee shall prohibit all use of alcohol and illegal drugs by employees, volunteers, children and visitors in any building or on the premises used by children and in the presence of children.

3.184 A licensee shall prohibit all use of alcohol, tobacco and illegal drugs by employees, volunteers, children and visitors in any vehicle owned, leased or provided by the licensee and utilized for transporting children.

3.185 In vehicles owned by employees or volunteers, a licensee shall prohibit all use of alcohol, tobacco and illegal drugs by employees, volunteers, children and visitors while transporting children.

Part VI. Transportation

3.186 A licensee that chooses to provide for the transportation of children to or from the premises, or in connection with an authorized activity, shall ensure that transportation is provided, in accordance with the provisions of these requirements.

3.187 A licensee shall maintain on file a photocopy or other written record of the following documents for every motor vehicle used by the licensee to transport children:

- a. A valid motor vehicle license;
- b. A current motor vehicle registration; and
- c. A current motor vehicle insurance coverage

contract.

3.188 A licensee shall ensure that the driver of any motor vehicle used to transport children enrolled in a facility or program has a valid driver's license to operate the specific type of motor vehicle used to transport children.

3.189 A licensee that chooses to transport non-ambulatory children with disabilities shall ensure that the following additional equipment is provided for all vehicles except automobiles used for transporting children:

- a. A ramp device to permit entry and exit of a child;
- b. A fastening system for wheelchairs that secures the chair to the vehicle floor; and
- c. Adequate aisle space that does not impede access to the exit door.

3.190 A licensee shall ensure that all vehicles used to transport children:

- a. Are maintained in a clean and safe condition;
- b. Are equipped with a triangular red portable reflector device;
- c. Are equipped with a fully stocked first aid kit located on the inside of the vehicle;
- d. Have seats and back rests that are securely fastened;
- e. Have all seats facing sideways or backward securely locked in place; and
- f. Have an operable heater capable of maintaining a temperature of 60 degrees Fahrenheit.

3.191 A licensee shall ensure that the following safety procedures are followed:

- a. An employee or volunteer is always present when a child is in the vehicle;
- b. All children are secured in a car seat that is appropriate for their age and that complies with applicable provisions of federal and state law(s) or regulations;
- c. Children who are not in a car seat are using seat belts; and
- d. When transporting more than four children below six years of age, that there is one adult, in addition to the driver, in the vehicle.

CHAPTER 4: RESIDENTIAL CHILD CARE FACILITY

Part I. Administration

Authorization to Operate a Facility

4.01 As a condition for being authorized by the Division to operate a facility, a licensee shall make

application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1 through 3.

Part II. Personnel

Staff-to-Child Ratios During Daylight Hours

4.02 During daylight hours, a building with a licensed capacity of 12 or fewer children shall have no fewer than one direct care worker on duty on the premises when children are present. When no children are present, there shall be one employee who can be reached by telephone.

4.03 During daylight hours, a building with a licensed capacity of 13 children or more, shall have one direct care worker on duty on the premises for every 10 children or fraction thereof when children are present. When no children are present, there shall be one employee who can be reached by telephone.

Staff-to-Child Ratios During Night-Time Hours

4.04 During night-time hours, a building with a licensed capacity of 12 or fewer children, all of whom are of the same gender, shall have one direct care worker on duty on the premises when children are present. The direct care worker shall be in the area where children sleep or in any area within close proximity to the area(s) where children sleep. The direct care worker shall not be required to be awake. An additional employee shall be on call and available to reach the building, when called, within 30 consecutive minutes. If the building is co-educational, the direct care worker shall be on duty and awake.

4.05 During night-time hours, a building with a licensed capacity of 13 children or more, shall have one direct care worker on duty on the premises and awake for each 16 children or fraction thereof, when children are present. The direct care worker shall be in the area where children sleep or in any area within close proximity to the area(s) where children sleep. An additional employee shall be on call and available to reach the facility, when called, within 30 consecutive minutes.

Recreation

4.06 A facility with a licensed capacity of 13 children or more shall designate one full-time employee to plan, coordinate and lead recreational, physical exercise and leisure time activities for children.

Part III. Children's Services and Activities**Visitation with Children**

4.07 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing visits between children and their parent(s), legal guardian, relatives and friends, both at the facility, at the children's own homes and at other suitable locations. These policies and procedures shall address the days and hours of visits, frequency of visits permitted, any exceptions governing whom the child may visit, and whom to contact to arrange for special accommodations in the event of hardship or emergencies and shall be consistent with applicable State law(s), regulations or court orders.

4.08 A facility shall explain the policies and guidelines to the child and his or her parent(s) or legal guardian.

4.09 A facility shall provide accommodations within the buildings to enable visits with children to be conducted in reasonable privacy, except where the service plan indicates that visits are to be directly supervised, or when the facility has reason to believe that a particular visitor would not be in the best interest of the child.

4.10 A facility shall not deny or restrict children's visits in the facility with their parent(s), legal guardian, relatives or friends based upon a child's behavior or infraction of these requirements, unless specified in the child's service plan.

Facility Visits or Tours

4.11 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing visits to or tours within the facility by volunteers, members of the facility's governing board, advisory committees or councils, public officials, the media and members of the public-at-large who are not related to children in care. The policies and procedures shall address:

- a. The process by which such persons shall be required to seek and secure prior written approval to visit or tour the facility;
- b. The purpose and extent of such visits or tours;
- c. The days, hours, frequency and duration of any such visits or tours;
- d. The circumstances and conditions under which such persons may visit or tour, including a requirement that such visits or tours be supervised by employees;
- e. Precautions to protect the health, safety and well-being and to prevent risk or harm to children in care;

f. Requirements designed to protect the privacy rights of children in care; and

g. Conditions to ensure that such visits or tours do not:

- Cause a major or serious disruption of services or treatment to children;
 - Interfere with the implementation of the child's service plan;
 - Intimidate or embarrass children or employees;
- or
- Seriously interfere with or disrupt program operations.

Overnight Visits Away from Facility

4.12 A facility shall include in the visitation policies and procedures provisions for verifying the identity of any visitor(s) not known to the facility and for securing prior to the visit pertinent information about the location of the overnight visit and the adult(s) responsible for the child's care during the visit.

Sending and Receiving Mail

4.13 A facility shall not deny or restrict a child's right to send and receive mail without censorship and without limiting the amount of mail a child sends or receives, except when:

- a. The facility has reason to believe that a child's mail may contain unauthorized, injurious or illegal materials;
- b. A court order restricts this right; or
- c. A facility has reason to believe that a particular child's mail may present a security risk.

4.14 A facility shall ensure that each child has reasonable access to writing materials and postage.

Children's Money

4.15 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing the handling and management of children's money. These policies and procedures shall include provisions on:

- a. The conditions under which a child may possess his or her own money;
- b. The management of individual monetary accounts, ensuring that there is an accurate, individual accounting of all monies belonging to a child, including the receipting and disbursing of all monies;
- c. Prohibiting a facility from requiring a child to assume responsibility for the cost of his or her own care

and treatment, except for the reasonable reimbursement of costs required to pay for purposeful damage to the facility or to the property of another person by a child; and
d. Allowing or facilitating opportunities for a child to earn an allowance or to earn money through work assignments.

Sleep

4.16 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing the time to be set aside for uninterrupted daily sleep for each child. The policies and procedures shall ensure that each child is given the opportunity for at least eight hours of uninterrupted rest on a daily basis, unless the service plan or health needs of the child indicate otherwise.

Clothing and Other Personal Belongings

4.17 A facility shall ensure that each child has adequate, clean, and seasonally appropriate clothing.

4.18 A facility shall permit a child to bring clothing and other personal belongings to the facility, unless prohibited by the facility's policies and procedures.

4.19 A facility shall make adequate provisions for storing a child's clothing and other personal belongings while the child is enrolled, so that clothing used by a child does not come into contact with clothing used by another child.

4.20 A facility shall permit a child to take with him or her all clothing and other personal belongings identified as his or hers at the time of discharge.

Nutrition

4.21 A facility shall provide at least three nutritiously balanced meals for each child on a daily basis at regular times, with not more than 14 hours between the evening meal and breakfast.

Discharge and Aftercare Plans

4.22 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing discharge and aftercare planning. The policies and procedures shall include:

- a. The roles and responsibilities of the child's parent(s) or legal guardian, the referring agency, and the facility;
- b. The handling of an emergency discharge of a child that ensures the immediate notification of his or her

parent(s) or legal guardian, or the referring agency;

c. The involvement of the child in developing the discharge and aftercare plan, consistent with the child's ability to understand the plan and process; and

d. The contents of the discharge report, which shall include the name, address telephone number of the person or agency to whom the child was discharged. In addition, the report shall include a summary of the services provided to the child while in care, goals specified within the service plan that have been achieved, service needs that remain to be addressed, and recommendations for appropriate follow-up services.

The discharge report shall be completed within 30 consecutive calendar days of the child's discharge.

4.23 A facility that discharges a child under circumstances that are not consistent with the child's service plan shall document in writing the following in the discharge report:

- a. The circumstances leading to the unplanned discharge;
- b. The actions taken by the facility and other parties; and
- c. The reason for the actions taken.

Part IV. Physical Plant

Living Unit Space

4.24 A facility shall ensure that the living unit(s) areas where children live -- have designated space for daily living activities, including dining, recreation, indoor activities and areas where children may visit with their parent(s), legal guardian, relatives and friends.

4.25 A facility shall ensure that a dining area is provided which shall be maintained in a clean manner, be well-lighted and ventilated. The licensee shall ensure that dining room tables and chairs or benches are sturdy and appropriate for the sizes and ages of the children in care.

Toilet and Bathing

4.26 A facility shall ensure that there are toilet and bathing accommodations that meet the following specifications:

- a. For every eight residents, there shall be at least one flush toilet, wash basin, and bathtub or shower;
- b. These toileting and bathing facilities shall not be located more than one floor from any bedroom; and
- c. Bathrooms shall have at least one mirror fastened to the wall at an age appropriate height.

Bedroom Accommodations

4.27 A facility shall ensure that any bedroom used by children includes:

- a. A designated area for sleeping;
- b. A floor area of at least 70 square feet in a single-occupancy bedroom and at least 50 square feet in a multiple-occupancy bedroom, excluding closet space;
- c. Sufficient space for beds to be at least three feet apart at the head, foot, and sides. Bunk beds shall be at least five feet apart at the head, foot and sides;
- d. No more than four children for sleeping per room;
- e. A door that may be closed;
- f. A window covering to ensure privacy; and
- g. Lights with safety covers or shields.

4.28 A facility shall ensure that each child is provided with:

- a. A bed;
- b. A cleanable, fire retarding mattress;
- c. Clean bed linens on at least a weekly basis;
- d. A pillow; and
- e. Blanket(s) appropriate for season and weather.

4.29 A facility shall use cots or portable beds in an emergency only and for no longer than a period of 72 hours.

4.30 A facility shall ensure that there are no more than two tiers when bunk beds are used. In addition, the facility shall ensure that the distance between the top bunk mattress and ceiling is of sufficient height to enable the child to sit upright in bed without his or her head touching the ceiling.

4.31 A facility shall ensure that bed linens are changed at least every seven calendar days, or more often, if needed.

4.32 A facility shall provide and locate in the bedroom for each child a chest of drawers, a bureau, or other bedroom furniture for the storage of clothing and other personal belongings.

4.33 A facility shall not permit a child to share the same bed with any other child.

4.34 A facility shall ensure that a child of five years of age or older may occupy a bedroom only with members of the same sex.

Part V. Health

Personal Care and Hygiene

4.35 A facility shall develop, adopt, follow and maintain on file written policies and procedures that ensure that:

- a. Children will receive guidance and instruction in personal care and hygiene appropriate to their age, gender, race and culture;
- b. Children follow personal care and good hygiene practices; and
- c. All necessary hygiene supplies, towels, washcloths and toiletries are provided to children in harmony with their age, gender, race and culture.

4.36 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing preventative, routine and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare. The policies and procedures shall include:

- a. Periodic appraisal of the general health of each child;
- b. Initial and continuing health screening procedures;
- c. Emergency procedures;
- d. Maintenance of health records;
- e. Arrangements with a licensed physician(s) and dentist(s) to provide needed care; and
- f. Availability of medical care on a 24-hours-a-day, seven-days-a-week basis.

4.37 A facility shall ensure that children receive timely, competent care when they are ill and continue to receive necessary follow-up care.

Medical and Dental Care

4.38 If a facility cannot document that each child has received a complete physical examination within 12 consecutive calendar months before admission to the facility, the facility shall arrange for the child to have a new physical examination, to be completed within 45 consecutive calendar days after admission.

4.39 A facility shall ensure that every child receives a physical examination no later than 12 consecutive calendar months after his or her previous physical examination and once a year thereafter.

4.40 A facility shall ensure that, upon admission, a child is asked if he or she has any physical illnesses or injuries. If a child shows symptoms of illness or injury, the facility shall arrange for the child to be examined immediately by a licensed physician or by a licensed nurse practitioner. The facility shall document the results of this

procedure in writing and maintain them on file in the child's record.

4.41 A facility shall ensure that a child receives necessary medical care throughout the year.

4.42 A facility shall ensure that every child over three years of age receives a dental examination annually.

4.43 A facility shall ensure that a child receives necessary, non-cosmetic dental care throughout the year.

4.44 A facility shall make provisions for a child to receive any needed eyeglasses, hearing aids, prosthetic devices or other corrective devices, as medically indicated by a licensed physician.

Prenatal Care for Pregnant Adolescents

4.45 A facility caring for a pregnant adolescent shall ensure that:

a. All pregnant adolescents receive comprehensive prenatal care, including:

1. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;

2. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29th to the 36th week of gestation;

3. Weekly visits to an obstetrician or certified nurse mid-wife from the 36th week of gestation until delivery; and

4. Participation in a child birth class provided by a registered nurse or child birth educator.

b. Arrangements for the delivery of the child are made by the end of the second trimester, or in situations wherein the adolescent is already pregnant beyond the second trimester upon admission to the facility, arrangements shall be made within 15 consecutive calendar days of the adolescent's admission to the facility;

c. A system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery;

d. Delivery arrangements are clearly recorded in the adolescent's medical record to which employees are to have access in an emergency; and

e. Pregnant adolescents receive a dental examination within three consecutive calendar months of admission, and that needed non-cosmetic dental care is provided.

CHAPTER 5. SECURE RESIDENTIAL CHILD CARE FACILITY

Authorization to Operate a Secure Residential Care

Facility

5.01 As a condition for being authorized by the Division to operate a secure residential care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

Admission

5.02 A facility shall only admit a child who has been adjudicated by a court of law or placed by the Delaware Division of Child Mental Health Services or any other in-state or out-of-state governmental agency.

Security Measures

5.03 A facility shall develop, adopt, follow and maintain on file a written statement identifying the specific security measures employed at the facility, and the basis for using these measures.

Definition

5.04 For purposes of this Chapter only, "automatic fail-safe system" means a combination of a mechanical and an electronic system that automatically unlocks all resident room doors and other doors required for building egress purposes in the event of either a power failure or a fire.

Staff-to-Child Ratios

5.05 A facility that is equipped with an automatic fail-safe system that allows full and free egress from all individual rooms and buildings in the event of a power failure or fire shall have at least one direct care on duty and on the premises for every five children or fraction thereof, during daylight hours, and shall have at least one direct care worker awake and on duty on the premises for every 10 children or fraction thereof during night-time hours. There shall always be a minimum of two direct care workers awake and on duty when children are present during night-time hours.

5.06 A facility that is not equipped with an automatic fail-safe system shall have at least one direct care worker on duty on the premises for every four children or fraction thereof, when children are present during daylight hours, and shall have at least one direct care worker awake and on duty on the premises for every six children or fraction thereof when children are present during night-time hours. There shall always be a minimum of two direct

care workers awake and on duty when children are present during night-time hours.

5.07 A facility shall assign direct care workers to cover no more than one living unit at the same time.

5.08 A facility shall have at least one additional employee immediately available at all times to assist on-duty employees in an emergency.

Outdoor Recreation Area

5.09 A facility shall ensure that the outdoor recreation area is enclosed with a suitable security fence.

Exemptions

5.10 A secure residential care facility shall be exempt from the following requirements:

- a. That portion of Requirement 3.69 regarding participation in off-site religious services or activities.
- b. Requirements 4.02 through 4.05 regarding staff-to-child ratios.

CHAPTER 6. SHELTER CARE FACILITY

Authorization to Operate a Shelter Care Facility

6.01 As a condition for being authorized by the Division to operate a shelter care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

Staff-to-Child Ratios

6.02 During daylight hours, a facility shall provide at least one direct care worker on duty on the premises for every five children, or fraction thereof, when children are present. During night-time hours, a facility shall provide at least one direct care worker awake and on duty on the premises for every 10 children, or fraction thereof, when children are present.

Health Care

6.03 A facility shall either:

- a. Secure written documentation that a child has received a complete physical examination within the 12 consecutive calendar months prior to his or her admission to the shelter care facility; or
- b. Provide or arrange for the provision of a complete physical examination within seven consecutive

calendar days of a child's admission to the shelter care facility.

Duration of Placement

6.04 A facility shall provide care to children for a period of time that is not to exceed 30 consecutive calendar days, unless:

- a. There is documentation in the child's service plan that clearly justifies a longer placement; or
- b. There is evidence that a strict adherence to the 30-day limit would require the child's release to another short-term placement, in which case the child may remain in the shelter care facility until a more permanent or long-term placement has been identified, or not later than 60 consecutive calendar days, whichever occurs first.

Exemptions

6.05 A shelter care facility shall be exempt from the following requirements:

- a. Requirement 3.153 regarding written documentation of a child's current immunizations;
- b. Requirement 3.154 regarding obtaining necessary immunizations within 30 consecutive calendar days of admission; and
- c. Requirement 3.155 regarding the essential health records to be maintained on file. If the items listed in Requirement 3.155 are available, they shall be kept on file by the facility.

CHAPTER 7. TRANSITIONAL CARE FACILITY

Authorization to Operate a Transitional Care Facility

7.01 As a condition for being authorized by the Division to operate a transitional care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

Admission

7.02 A facility shall admit children who:

- a. Have reached the age of 16 or older;
- b. Have demonstrated a level of maturity that will enable them to be involved in some community activities, including education or employment; and
- c. Require minimum guidance or supervision.

7.03 A facility shall accept a child into care only after a current comprehensive admission evaluation has been completed in accordance with Requirement 3.40 and only

when the evaluation indicates that preparation for self-sufficiency or independent living is the primary goal for the child.

7.04 At the time of admission, a facility shall enter into a written agreement with each child. The agreement shall include:

- a. A delineation of the respective roles and responsibilities of the facility, the child, and other involved parties;
- b. A description of the rules governing the conduct and consequences of inappropriate behavior of the child while in care;
- c. A statement of any financial arrangements related to placement, in accordance with Requirement 4.15; and
- d. The approval signature of the child and the signature of a representative of the facility.

Service Plan

7.05 In addition to the provisions of Requirements 3.48, 3.49 and 3.50, a facility shall ensure that the service plan includes:

- a. The type and frequency of supervision needed;
- b. The respective roles and responsibilities of the facility, the child and other involved parties;
- c. The time-frames and methods to be used to gradually reduce dependency while appropriately increasing personal responsibility;
- d. Identification of all persons responsible for the implementation of the plan;
- e. The life skills the youth will need to acquire before discharge;
- f. The criteria for achieving a successful discharge; and
- g. The preliminary plan for discharge and aftercare, in accordance with Requirements 4.22 and 4.23.

Activity Schedule

7.06 A facility shall assist each child to develop and follow a written activity schedule that includes:

- a. Life skills training and practice appropriate to achieving independent living;
- b. Household chores to be completed by children in care;
- c. Employment, job skill training or educational activities;
- d. Leisure-time or recreational activities; and
- e. Contacts with employees, volunteers or community people.

Staff Coverage

7.07 A facility shall develop, adopt and follow written policies and procedures governing the type and frequency of employee supervision provided for each child. The policies and procedures shall:

- a. Contain criteria for determining the type and frequency of employee supervision. The criteria shall be based on an assessment of each child's maturity, suitability and readiness for responsibly and safely handling various degrees of responsibility and independence; and
- b. Delineate a mechanism by which a child can communicate with a facility for information, assistance or guidance, or to express a concern or need that the child cannot resolve alone.

Exemptions

7.08 A transitional care facility shall be exempt from the following requirements:

- a. Requirements 3.131 through 3.135 regarding the outdoor recreation area.
- b. Requirements 3.153 and 3.154 regarding child immunizations.
- c. Requirements 4.02 through 4.05 regarding staff-to-child ratios.
- d. Requirement 4.15 c, regarding the prohibition that a child pay for his or her own care and treatment.

CHAPTER 8. DAY TREATMENT PROGRAMS

Authorization to Operate a Day Treatment Program

8.01 As a condition for being authorized by the Division to operate a day treatment program, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2 and 3.

8.02 If a day treatment program chooses to use any form of restrictive procedure as defined by Requirement 1.34, the day treatment program shall secure prior written authorization from the Division and shall comply with the Requirements of Chapter 9.

Health Appraisal

8.03 A program shall ensure that within one month following admission, there shall be on file an age-appropriate health appraisal conducted within 12 consecutive calendar months prior to admission for each child enrolled. Health appraisals shall be certified by a licensed physician or nurse practitioner and shall be

updated annually. The health appraisal shall include:

- a. A health history;
- b. A physician's examination;
- c. Recommendations regarding restrictions or modifications of the child's activities, diet or care;
- d. Prescriptions for medication or recommendations regarding medications; and
- e. Documentation of the immunization status.

Activities

8.04 The program shall ensure that all children are provided activities and physical exercise or routines that are developmentally and age-appropriate.

8.05 The program shall ensure that children under six years of age are provided with opportunities for rest after the noon meal. The rest area shall be adequately lighted to allow for visual supervision at all times.

Indoor Space

8.06 A program shall have at least 35 square feet of usable indoor space per child, exclusive of toilet rooms, kitchen areas, eating areas, isolation rooms, offices, storage spaces, hallways, closets and gymnasiums.

Sleeping Accommodations

8.07 A program shall ensure that each child under six years of age who is present during scheduled rest time possesses age-appropriate, clean rest equipment and bedding, and that equipment and bedding are safely maintained for the exclusive use of that child. Disposal bedding shall be acceptable as an alternative to maintaining rest equipment for the exclusive use of that child.

Toilet Facilities

8.08 A program shall have enclosed toilet rooms inside the building on the same floor that houses the recreation or play areas.

8.09 A program serving children between two and five years of age shall maintain a sink and toilet ratio in accordance with the following table:

No. of Children	Number of Toilets	Number of Sinks	Ratios
1-15	1	1	1/15
16 - 35	2	2	1/17.5
36 - 100	3-5	3-5	1/20
Over 100			1/25

8.10 A program serving children between six and 18 years of age shall have one sink and toilet for every 25 children, or fraction thereof, based upon licensed capacity. A urinal shall be counted as one-half of a toilet, provided that the population served includes a significant number of males and that at least two flush toilets are available and accessible to both males and females.

Staff-to-Child Ratios

8.11 A program shall maintain the following direct care worker to child ratios for each age group when children are present during daylight hours:

Age of child	Minimum direct care worker to child ratio
0-5	1:4
6-12	1:6
13+	1:10

8.12 A program shall ensure that at least two employees are present and on duty on the premises at all times when children are present, regardless of the number of children.

Day Treatment Agreement

8.14 A program shall develop, adopt, follow and maintain on file a written day treatment agreement. The agreement shall be completed prior to the child's admission and shall be signed by the licensee, the child, if appropriate, the child's parent(s) or legal guardian and the referring agency and shall include:

- a. A description of the respective expectations, roles and responsibilities of the program, child, family and other involved parties;
- b. Specification of the hours of operation, arrangements for service of meals, equipment to be provided by the family, transportation arrangements and visitation policies;
- c. Specification of the behavior management policy, the release policy and the procedures for handling child and parent complaints; and
- d. Specification of grounds for termination of enrollment.

Release of Children

8.15 A program shall develop, adopt, follow and maintain on file written policies and procedures governing the release of children. Such policies and procedures shall require that a copy is given to all parents, employees, volunteers and children and shall include provisions:

- a. To ensure documentation of the release of the

child to an authorized person, agency or public school bus service;

b. For the emergency release of children. When a parent calls the program requesting emergency release of the child, the program shall verify the identity of the parent prior to releasing the child;

c. Regarding the release of the child to a person not known to the licensee. A program shall verify the identity of any person not known to employees prior to the release of a child and shall retain verification for at least 24 hours;

d. To be followed when a person not authorized to receive a child requests release of a child. A program shall ensure that a child is released only to his or her parent(s), legal guardian or other person authorized by the parent(s) to receive a child; and

e. To be followed when a person showing clear signs of drug or alcohol impairment requests release of a child.

Handling of Sick Children

8.16 A program shall have a separate area where children who are exhibiting symptoms of illness that require isolation from the group may be cared for until they can be released to their parent(s) or legal guardian or are diagnosed by a licensed physician or nurse as posing no risk to themselves or others. The area shall not be located in the kitchen or toilet areas.

Child Accident and Injury

8.17 A licensee shall ensure that a child who is injured by an accident or fall is provided with necessary first aid treatment, or is taken to an emergency medical treatment center, and that the parent(s) or legal guardian is immediately notified.

CHAPTER 9. RESTRICTIVE PROCEDURES

Authorization to Use Restrictive Procedures

9.01 As a condition for being authorized by the Division to implement restrictive procedures, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, and 3.

9.02 A licensee shall not utilize or administer a restrictive procedure on any child below six years of age.

Policies and Procedures Governing the Appropriate Use of Restrictive Procedures

9.03 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the appropriate use of each type of restrictive procedure to be employed. The policies and procedures shall:

a. Identify the types of behavior or conditions for which restrictive procedures are to be permitted;

b. Document that the licensee's use of restrictive procedures are in accordance with established, accepted clinical practice and is age-appropriate;

c. Delineate the name, position and qualifications of the employees who have direct responsibility for applying and for supervising the application of restrictive procedures;

d. Restrict the use of these procedures only by designated and authorized employees who have been given prior training in how to administer and supervise the application of such procedures;

e. Require that an application of a restrictive procedure is done in concert with the current service plan for that child, taking into account the child's developmental and medical needs;

f. Require that a legal, informed written consent from the parent(s) or legal guardian of a child is obtained prior to the application of any restrictive procedure, except in emergency situations, in which case, the policies and procedures shall outline safeguards for the use of a restrictive procedure in such a circumstance;

g. Require that these procedures may only be employed as ancillary techniques to accompany positive reinforcement techniques;

h. Require that a technique may only be employed when its use outweighs the risk of harm accompanying its use;

i. Indicate time limitations and other restrictions on the use of each form of restrictive procedure;

j. Require that a technique may only be employed when it is the least restrictive means to address the behavior that necessitated its use;

k. Require that the chief administrator or his or her designee provides administrative oversight of each use of a restrictive procedure to ensure that these procedures are humanely and appropriately applied; and

l. Require that a written record of each application of a restrictive procedure be maintained. The record shall contain: the name of the child; the identity of the employee(s) who administered the procedure; the date, time and duration of the procedure; the circumstances surrounding the use of the procedure; and a description of the child's demeanor.

Human Rights Committee

9.04 A licensee shall establish a Human Rights Committee of at least five adult individuals of known reputation, two of whom shall be professionally knowledgeable or experienced in the theory and ethical application of various treatment techniques used to address behavioral problems. The Human Rights Committee shall include members from the licensee and external to the licensee or its parent organization. A majority of Committee members shall be external to the licensee or its parent organization, and one member of the Committee shall be either a licensed mental health professional, a licensed physician, a licensed clinical psychologist, or a clinical social worker. The Committee shall meet at least on a quarterly basis.

9.05 The Human Rights Committee shall be responsible for:

- a. Determining that children in care are receiving humane and proper treatment;
- b. Reviewing and making recommendations regarding the licensee's policies and procedures governing the use of restrictive procedures;
- c. Reviewing the restrictive procedures records and advising the Chief Administrator accordingly;
- d. Recording and maintaining on file written minutes of all of its meetings, and providing the Chief Administrator with a copy of these minutes;
- e. Making inquiries into any allegations of abusive techniques or the misuse of restrictive procedures. A report of the inquiry shall be provided by the Committee to the Chief Administrator and sent to the Division;
- f. Monitoring the qualifications and training of employees who have been given responsibility for administering restrictive procedures and to make recommendations to the Chief Administrator accordingly; and
- g. Reviewing and making recommendations on individual treatment plans that include the application of some form of restrictive procedures.

9.06 An emergency application of a restrictive procedure may occur for a specific child without the prior review of the Human Rights Committee, but only when the situation is deemed to be an emergency.

Orientation and Training

9.07 In addition to complying with Requirements 3.25 through 3.30, a licensee shall ensure that employees authorized to apply a restrictive procedure also receive orientation and training on:

- a. The various types of restrictive procedures;
- b. The acceptable way to administer and supervise the application of restrictive procedures;

c. The possible side effects of psychotropic medications; and

d. The policies and procedures governing the appropriate use of restrictive procedures.

Application of Restrictive Procedures

9.08 A child who is having a restrictive procedure applied shall be under continuous monitoring and observation to prevent the child from harming himself or herself, or others. A child shall be given an opportunity for a minimum of 10 consecutive minutes of release within each two consecutive hours of the application of a restrictive procedure for the purpose of moving about or exercising, and shall be permitted to go to a toilet, when requested, or be given the opportunity to go to a toilet at least once every two consecutive hours.

9.09 A licensee shall not authorize or permit restrictive procedures to be used in a punitive, retributive, harsh or abusive manner, nor for the convenience of staff or as a substitute for other less restrictive, appropriate means of social treatment or intervention.

9.10 A licensee shall ensure that any allegation(s) of an inappropriate or abusive application of a restrictive procedure is brought to the attention of the Human Rights Committee promptly.

9.11 A licensee shall ensure that the Human Rights Committee initiates an investigation of any allegation(s) of an inappropriate or abusive application of a restrictive procedure within two consecutive business days of having received the allegation(s).

9.12 A licensee shall use the least restrictive form of restrictive procedure necessary to control a child's dangerous, violent, or seriously disruptive behavior.

9.13 A licensee shall ensure that employees immediately release a child from a prescribed restrictive procedure when the situation necessitating its need no longer exists or when the maximum time allowed for use of such a procedure has expired, whichever occurs first.

Exclusion

9.14 A licensee shall utilize exclusion only:

- a. For a prescribed duration of time that shall not exceed 60 consecutive minutes; and
- b. If there are more than 10 exclusions for an individual child or a cumulative total of six hours within any consecutive 24-hour period, a licensee shall ensure that:

1. A review is conducted by the chief administrator, or his or her designee, to determine the suitability of the child to remain in placement, or whether modifications to the child's service plan are warranted; and

2. Appropriate action is taken in response to the findings of the review.

9.15 A licensee shall ensure that:

a. At least one employee is responsible for providing continuous monitoring of the child;

b. The child is not excluded in a closet, bathroom or unfinished basement or attic; and

c. The child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

Locked Isolation

9.16 A licensee shall utilize locked isolation only:

a. When a child's behavior is so violent or disruptive as to present a high risk of physical or emotional harm to the child or others;

b. When other less restrictive and less punitive physical interventions have been applied without success; and

c. For a duration of time that does not exceed two consecutive hours or a total of six non-consecutive hours within any 24-hour period.

9.17 A licensee shall ensure that:

a. There is a minimum length of time for placement when a child is isolated in a locked room;

b. The application of locked isolation is prohibited for non-violent or non-assaultive offenses or behaviors or for practices designed to prevent children from running away, to seclude a child who is ill, to punish a child for stealing, cursing or failing to comply with house rules, or to facilitate supervision for the convenience of employees; and

c. The child is re-introduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

9.18 A licensee shall ensure that a child placed in locked isolation is not in possession of belts, matches, weapons or any other potentially harmful object or material that could present a risk of harm to a child.

9.19 A licensee shall ensure that an employee who is assigned to monitor a child placed in locked isolation shall have no other immediate responsibility and shall:

a. Be in visual and auditory contact with the child at all times;

b. Ensure that all personal needs of the child are met;

c. Ensure that a child has access to toilet facilities, as needed; and

d. Ensure that the child receives the same number and frequency of meals and snacks provided to other children in the facility or program.

9.20 A licensee shall utilize locked isolation only:

a. For a prescribed duration of time that shall not exceed 60 consecutive minutes unless authorized by the chief administrator, or his or her designee, and then the locked isolation shall not exceed 120 consecutive minutes; and

b. If a child is in locked isolation for a cumulative total of six cumulative hours within a 24-hour period, the licensee shall ensure that:

1. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement, or whether modifications to the child's service plan are warranted; and

2. Appropriate action is taken in response to the finding of the review.

9.21 A licensee shall ensure that the child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has regained control.

9.22 A licensee shall ensure that any room to be used for locked isolation has:

a. At least 75 square feet and a ceiling height of at least eight feet;

b. A safety glass window, mirror or camera that allows for full observation of the locked isolation room;

c. No hardware or furnishings that obstruct observing the child at all times;

d. Installed hardware, equipment and furnishings that do not present a physical hazard or a suicide risk;

e. Installed either the means for natural or mechanical ventilation to provide ventilation at a level deemed appropriate to maintain the child's health and well-being;

f. The capacity to maintain a temperature of at least 68 degrees Fahrenheit; and

g. A minimum of 10 foot-candles of light in all areas of the room.

Chemical Restraint

9.23 A licensee shall ensure that each administration of chemical restraint is prescribed by a licensed physician who has personally reviewed the child's health records and has examined the child at the time of the episode.

9.24 A licensee shall not allow the use of a physician's standing order (ProReNata) for purposes of authorizing the application of a chemical restraint.

9.25 A licensee shall ensure that any application of a chemical restraint, whether administered orally or by intramuscular injection, is administered only by a licensed nurse or by a licensed physician.

9.26 When a child requires chemical restraint on more than six occasions in any 30 consecutive calendar-day period, the chief administrator, or his or her designee, shall determine the appropriateness of the child's continued placement in the facility or program.

9.27 A licensee shall not administer a chemical restraint as a punishment, for the convenience of employees, or as a substitute for a treatment program.

9.28 A licensee shall ensure that:

a. The initial administration of a chemical restraint does not exceed 24 consecutive hours in duration;

b. Only a licensed physician who has reviewed the child's health records and who has examined the child may authorize the application of an additional chemical restraint and then only for an additional consecutive 24-hour period and only upon determining that the continuance of chemical restraint on an emergency basis is clinically necessary and appropriate;

c. Employees regularly monitor the child under chemical restraint, observe the child's condition or state and immediately advise the prescribing physician of any observed side effects; and

d. A written record of the child's receipt of a chemical restraint and his or her condition, including any observed side effects, is maintained in the child's health records.

Mechanical Restraint

9.29 A licensee shall utilize a mechanical restraint only:

a. When a child's behavior is so violent or disruptive as to present a high risk of physical harm to the adolescent or others;

b. Other less restrictive and less intrusive physical interventions have been applied without success;

c. When transporting a child to or from a court hearing or other circumstances requiring that truancy prevention be exercised and that no other means of prevention is appropriate;

d. For a duration of time that shall not exceed two consecutive hours or a total of four consecutive hours

within any consecutive 24-hour period or that is utilized more than four times within a consecutive five-day period. An exception to this is allowed only for purposes of transporting a child to or from a court hearing or other off-premises location wherein truancy prevention is required; and

e. Employees utilizing the restraint have received training in properly applying it.

9.30 A licensee shall ensure that:

a. The child being mechanically restrained is protected and handled by an employee in a safe manner designed to avoid injury or pain in applying the restraint;

b. Only one child is mechanically restrained in the same room or area at the same time, unless being transported in a vehicle to and from a court hearing;

c. An employee maintains visual contact with the child at all times while the mechanical restraint is being applied;

d. An employee inspects the child's wrists, arms, or legs every 15 consecutive minutes to prevent injury or circulation problems from occurring, and attempts to release each limb every 60 consecutive minutes for a duration of 10 consecutive minutes; and

e. The restrained child has reasonable access to toilet facilities and to all scheduled meals while restraints are being applied.

9.31 A licensee shall prohibit the use of the following mechanical restraints:

a. Papoose boards.

b. Ropes.

CHAPTER 10. ADVENTURE ACTIVITY PROGRAM

Authorization To Provide Adventure Activity Program

10.01 As a condition for being authorized by the Division to involve children in an Adventure Activity Program, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, and 3.

Policies and Procedures

10.02 A licensee shall develop, adopt, follow and maintain on file written policies and procedures that contain:

a. A comprehensive description of the various types of adventure activities in which the licensee plans to involve children, including the specific destinations for each day, routes to be followed whether by highway, trail

or waterway, and the modes of transportation to be used;

b. Safety rules that are to be used by employees, volunteers and children when engaged in each of the types of adventure activities that are described in this Chapter;

c. Recognized standards of safety pertaining to each of the specified adventure activities to be utilized;

d. Criteria based on recognized standards for employees and volunteers who are responsible for leading, instructing and supervising children engaged in any of the adventure activities to be utilized;

e. Descriptions of appropriate safety equipment and clothing, such as safety glasses or goggles, helmets, gloves, special shoes and outdoor clothing that are required to be used for adventure activities;

f. Procedures to be employed to ensure that the environment is protected and any waste materials or trash are appropriately disposed of;

g. Instructions for posting itineraries, preparing for emergency medical services, and notifying, at agreed upon times, the licensee's main office when the adventure activity takes place in a location or locations that are remote from the main premises of the licensee;

h. Guidelines to ensure that adventure activities include opportunities for problem-solving, developing a positive self-image, and developing an appreciation for the natural environment and conservation;

i. Guidelines to ensure that adventure activities are followed by opportunities for reflection and life application;

j. Guidelines to ensure that participation is conducted within the boundaries of the child's capabilities, dignity and respect for self-determination;

k. Procedures to ensure that necessary potable water, nutritious food, appropriate clothing, shelter, rest and other essentials are available and planned for;

l. Procedures for obtaining signed consent forms from a child's parent(s), legal guardian or referring agency; and

m. Procedures that ensure the reporting to the Division of any fatalities or any accidents resulting in the hospitalization of a child.

Safety/Risk Management Committee

10.03 A licensee shall establish a Safety/Risk Management Committee consisting of representatives of management, employees, and individuals with experience and expertise in adventure activities. This Committee shall review the licensee's policies and procedures governing adventure activities and monitor risk management and safety practices employed in the various adventure activities, and advise the licensee's chief administrator of any revisions, omissions or additions that are deemed necessary and appropriate. The Committee

shall review any accident that may occur and the circumstances surrounding the accident and send written findings and recommendations to the licensee's chief administrator.

Staff Qualifications

10.04 A licensee shall ensure that employees and volunteers who have responsibility for a particular adventure activity are qualified and experienced in the specific adventure activity. If certification is required, such as is for swimming and certain other aquatic activities, such employees or volunteers shall have current certification.

10.05 An aquatic supervisor shall be an adult who has satisfactorily completed the training and certification requirements for a water safety instructor that are equivalent to those adopted by the American Red Cross for water safety.

Staff-to-Child Ratios

10.06 A licensee shall ensure that the ratio of employees and volunteers to children is in conformity with standards for the specified adventure activity being applied and that have been recognized by a national accrediting or other recognized organization.

10.07 A licensee shall ensure that an aquatic supervisor or water safety instructor is on duty at each aquatic activity. The aquatic supervisor shall be responsible for the enforcement of the licensee's safety rules, policies and procedures governing aquatic activities, including swimming, boating, canoeing, kayaking, water skiing and white water rafting.

Away From Campus Adventure Activities

10.08 A licensee shall maintain on file at the licensee's administrative office a list of all children, employees, and volunteers who participate in an adventure activity that occurs away from the premises of the licensee.

10.09 A licensee shall ensure that a fully stocked First Aid kit that is adventure activity- appropriate and readily available accompanies the employee who is the lead person for the away-from-campus adventure activity.

10.10 A licensee shall develop, adopt, follow and maintain on file:

a. A written copy of its itinerary and pre-established check-in times; and

b. The names of children, employees and volunteers

participating in an adventure activity that involves out-of-state travel or within-state travel of more than 48 consecutive hours duration.

The licensee shall send a copy of the itinerary to the Division at least 15 consecutive calendar days prior to departing on the adventure activity and shall provide the child's parent(s), legal guardian or referring agency with a copy of the itinerary.

Equipment

10.11 A licensee shall ensure that any equipment and gear that is to be used in connection with a specified adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age- and body-size appropriate.

10.12 A licensee shall ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved by the Union of International Alpine Association (UIAA), or an equivalent certifying organization, and have been inspected by employees responsible for supervising the adventure activity before engaging children in the activity.

10.13 A licensee shall ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which a child is engaged.

Natural Swimming Area Life Saving Equipment

10.14 A licensee shall clearly delineate the areas for swimmers and non-swimmers in any natural swimming area used by children, such as a lake, river, bay, ocean or gulf.

10.15 A licensee shall ensure that lifesaving equipment is provided at each permanent swimming area and shall be placed so it is immediately available in case of an emergency. The following equipment shall be available:

- a. A whistle or other audible signal device for each employee on duty;
- b. An assist pole or other appropriate reaching device;
- c. A ring buoy or other appropriate throwing assist device that has a rope attached to it which is of sufficient length for the area;
- d. A backboard that has appropriate rigid cervical collars and a minimum of six straps;
- e. A first aid kit; and
- f. A rescue tube.

10.16 A licensee shall ensure that lifesaving equipment is provided for all other aquatic activities and is placed so that it is immediately available in case of an emergency.

At a minimum, the equipment shall include:

- a. A whistle or other audible signal device;
- b. A throwing assist device; and
- c. A first aid kit.

Aquatic Procedures

10.17 A licensee shall ensure that before engaging in any aquatic activity, each child shall be classified by the aquatic supervisor according to swimming ability in one of two classifications: swimmer and non-swimmer.

10.18 A licensee shall not permit a child to participate in an aquatic activity that requires higher skills than the child's swimming classification, except during formal instruction.

10.19 A licensee shall establish and enforce a method, such as the buddy system, for supervising children who are involved in an aquatic activity. The system used shall include procedures for check-in, check-out, and the periodic accounting for the whereabouts of each child by an employee of the licensee. A licensee shall ensure that an accounting of the number of swimmers is conducted at least once every 10 consecutive minutes.

10.20 A licensee shall develop, adopt, follow and maintain on file a written aquatic emergency plan, for each aquatic activity. The plan shall include:

- a. Rescue procedures and frequency of drills;
- b. Child accountability;
- c. Prompt evacuation; and
- d. Notification of outside emergency services.

10.21 A licensee shall ensure that swimming at sites other than a waterfront or pool that is on the premises of the licensee is supervised by an aquatic supervisor who shall be assisted by one aquatic observer for every 10 children, or fraction thereof, in the water.

10.22 A licensee shall ensure that the buddy system is used and that buddy checks are conducted every five minutes whenever swimming is permitted at non-permanent sites.

10.23 A licensee shall not conduct or permit swimming programs during periods of darkness. This provision does not prohibit the use of swimming pools that have underwater and deck lighting that provides unrestricted vision.

10.24 A licensee shall ensure that headfirst diving occurs only in designated areas and only in water that is five feet deep or more.

10.25

A licensee shall adhere to the following table to determine minimum diving area depths and distances from the end of the board or platform:

	Water Depth	Distance
Competitive Swim/Classes	5 feet	10 feet
Platform less than two feet above water	8 feet	10 feet
Board two feet or less above water	10 feet	15 feet
Board more than two feet above water	15 feet	20 feet

Watercraft and Water-Skiing Activities

10.26 A licensee shall conduct watercraft activities only during daylight hours.

10.27 A licensee shall provide an appropriately sized, coast guard-approved, personal flotation device for each occupant of a watercraft and ensure that such a device is worn by every occupant of a watercraft.

10.28 A licensee shall ensure that an appropriately sized, coast guard-approved, personal flotation device shall be worn by any water-skier, by any participant in a sailing activity, or by any participant of a white water adventure activity.

10.29 A licensee shall not use personal flotation devices of kapok construction.

10.30 A licensee shall not permit a non-swimmer to board a sailboat unless accompanied by an adult swimmer.

10.31 A licensee shall ensure that the aquatic supervisor or an adult aquatic observer has immediate access to a watercraft with which to provide emergency assistance on the permanent swimming site.

10.32 A licensee shall ensure that a watercraft docking area is not adjacent to a swimming area, and that a swimming area is not used for the launching or dropping off of water-skiers.

10.33 A licensee shall ensure that, when a watercraft has a rated capacity, the capacity is observed and when a watercraft does not have a rated capacity, all occupants

wear an appropriately sized, coast guard-approved personal flotation device. This provision does not apply when the non-rated watercraft is a canoe being used by one or two advanced swimmers during formal instruction.

CHAPTER 11. PARENTING ADOLESCENT FACILITY

Authorization to Operate a Residential Facility for Parenting Adolescents

11.01 As a condition for being authorized by the Division to operate a residential facility for parenting adolescents, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

Definition

11.02 For purposes of this chapter only, "Adolescent" means a child who is parenting a child.

Direct Care Worker Qualifications for a Parenting Adolescent Facility

11.03 A direct care worker, at the time of appointment, shall possess at least:

- a. One year of work experience in a child care facility or program; and
- b. Fifteen hours of training in early childhood development.

Staff-to-Child Ratios

11.04 A facility shall maintain the following staff-to-child ratios when adolescents and their children are present:

- a. During daylight hours, one direct care worker on duty and awake on the premises for a combined total of every eight adolescents and their children below three years of age, or fraction thereof;
- b. During night-time hours, one direct care worker on duty on the premises for a combined total of every ten adolescents and their children below three years of age, or fraction thereof. The direct care worker shall not be required to be awake;
- c. When two direct care workers are required by the ratios during night-time hours, at least one direct care worker shall be required to be awake; and
- d. A facility shall not allow more than a combined total of 12 adolescents and their children below three years of age to reside in the facility at the same time.

One Adolescent Caring for another Adolescent's Child

11.05 A facility may permit an adolescent in residence to care for the child of another adolescent in residence only if the following conditions are met:

- a. The adolescent who is assuming the care of another adolescent's child cares for no more than one other child in addition to her own at any time;
- b. The adolescents discuss the expectations of the caregiver, including duration of child care, the child's nutritional and toileting needs, and whether the mother will make arrangements for compensation or exchange of baby-sitting; and
- c. The arrangement is reviewed and approved by the chief administrator or his or her designee.

Service Plan

11.06 The service plan shall include:

- a. An assessment of the child's health, nutritional, medical, and developmental needs;
- b. An assessment of the interest of the child's father, and the role that he is to have with the child and with the child's mother;
- c. An assessment of the interests of the grandparents and the role that they are to have with the child and with the child's mother; and
- d. Self-sufficiency goals for the adolescent mother, including child care and level of understanding of her child's developmental needs, food preparation skills, budgeting and money management, and job readiness.

Adoption Counseling Services

11.07 A facility shall provide adoption counseling if the adolescent expresses an interest in surrendering her child for adoption. The counseling shall include:

- a. An explanation of adoption;
- b. The types of adoptions available;
- c. The processes involved in surrendering a child for adoption; and
- d. The provision of a list of agencies licensed to provide these services.

Stimulation of Young Children

11.08 A facility shall ensure that all infants are held and spoken to and placed in a position to observe activities when they are awake at some point during the day.

11.09 A facility shall ensure that all infants under seven months of age are held throughout all bottle feedings, and older infants if they are incapable of holding a bottle on their own.

11.10 A facility shall ensure that all infants have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

11.11 A facility shall ensure that, when an adolescent mother is in school or is working, her infant is appropriately cared for, either in a licensed child care center or licensed family child care home, or in the facility.

11.12 A facility shall ensure that all children under 18 months of age are engaged in at least four of the following activities with their mothers for at least a total of 45 cumulative minutes each day:

- a. Sensory activities, such as the use of crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable toys or equipment;
- b. Language activities, such as the use of picture books, toy telephones, audio equipment with age appropriate music or sounds, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable items;
- c. Manipulative activities, such as the use of squeeze toys, grip toys, sorting and stacking toys, three or four piece inlay type puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable age appropriate play equipment;
- d. Building activities, such as the use of building blocks, toy cars, figures of animals and people, nesting toys, and other comparable toys or equipment;
- e. Large muscle activities, such as the use of low climbers, slides, riding or rocking toys, foam or plastic balls, gym mats, play tunnels, or other comparable play equipment; and
- f. Music activities such, as the use of rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, piano, or other comparable equipment or toys.

11.13 A facility shall ensure that all children 18 months of age or older are engaged in at least four of the following activities with their mother for at least one cumulative hour each day:

- a. Language activities, such as being read to from a book, playing with flannel boards and telling a story or having the child tell the story, pictures, identification or classification, puppets, audio-visual equipment, or other comparable equipment or toys;
- b. Science and math related activities, such as planting or gardening, playing with sand or the use of a sand table, fish or small animal care, and other

comparable activities;

c. Manipulative activities, such as the use of puzzles, pegs and a pegboard, lacing boards, table top building toys, dominoes, and other age appropriate comparable toys and equipment;

d. Building activities, such as the use of unit blocks, transportation toys, farm animals, play people, age appropriate, child size work bench or other household equipment;

e. Art activities, such as the use of crayons, tempera paint, large brushes and newsprint, finger paint, construction paper, past or glue, blunt scissors, collage materials, non-toxic felt-tip markers, clay or playdough, or other comparable play equipment or toys; and

f. Music activities, such as the use of rhythm sticks, drums, cymbals, bells, tape recorder, piano, or other comparable equipment.

Medical Care for Children of Parenting Adolescents

11.14 A facility shall ensure adolescents use only prescription and non-prescription medication that is authorized by a licensed physician or a licensed nurse practitioner for themselves and for their children.

11.15 A facility shall ensure that adolescents follow the advice of a licensed physician regarding the health care of the adolescent's child.

11.16 A facility shall ensure that an adolescent obtains for her infant:

a. A physical examination at the age of one month, and again by no later than the age of two-and-one-half months;

b. Immunizations as required by the Delaware Division of Public Health; and

c. Between three-and-one-half and four months of age, a physical examination and periodically thereafter as recommended by the infant's attending physician or medical clinic.

Discharge and Aftercare Plans

11.17 A facility shall include in the discharge and aftercare plan specific information regarding the status of the adolescent's child and health care, immunization, and medical needs that the child may require; and an assessment of the adolescent's ability to parent the child and to follow-up appropriately on the child's aftercare plan.

Toys and Equipment

11.18 A facility shall ensure that all toys and equipment

to be used by children are sturdy, of safe construction, non-toxic and free of hazards. A facility shall use a choker tube to ensure that all parts of all toys used by children under three years of age are large enough so that they cannot be swallowed by the child.

11.19 A facility shall provide an age-appropriate-sized crib for each infant or child, but may allow an infant to sleep in a playpen or on a mat during daytime hours. A facility shall ensure that:

a. Crib and playpen slats are no more than 2.3 inches apart;

b. The top rails of the crib or playpen are at least 19 inches above the mattress;

c. Any locks or latches on the dropside of a crib are safe from accidental release;

d. The mattresses used in all cribs and playpens fits snugly;

e. Each infant has sheets, blankets and other coverings for his or her exclusive use;

f. Wet or soiled or damaged sheets, mattress, blankets or other coverings are immediately replaced;

g. All sheets and blankets are laundered at least once a week, or if soiled, are laundered before next use;

h. Cribs and playpens are free of hazards and an excessive number of toys; and

i. Beds or cribs not used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use by a different infant.

Premises

11.20 A facility shall provide:

a. A separate bedroom with at least 100 square feet for the adolescent and her child, and an additional 50 square feet for each additional child;

b. Sufficient space to accommodate tables, high chairs, chairs for adolescents and their children, and on duty staff to eat meals together; and

c. Sufficient locked or secure storage space that can accommodate the personal belongings of the adolescent and her child(ren) which is reasonably accessible to the adolescent.

11.21 A facility shall ensure that all rooms used by children or infants are accessible to employees, including bedrooms.

11.22 A facility shall ensure that all buildings and grounds are maintained in a safe and sanitary manner.

11.23 A facility shall ensure that:

a. There are no poisonous plants accessible to children;

b. All corrosive agents, insecticides, bleach products, detergents, furniture polish, any products under pressure in an aerosol spray can, or any toxic substances are stored in a locked cabinet or closet and are not accessible to infants or young children;

c. All furniture and equipment used by the adolescents or their children, whether used indoors or outdoors, are of sturdy and safe construction; and

d. Non-permanent safety barriers, such as safety gates, are installed in a manner that will prevent infants and young children from falling down stairways, or ramps, or from gaining access to balconies or porches or elevated play areas.

APPENDIX

DELAWARE LICENSING CODE

Title 31, Chapter 3, Paragraphs 341 through 344, Delaware Code

341. Definition of "boarding home."

For the purpose of interpreting the meaning of the words "boarding home," any person, association, agency, or organization is the keeper of a boarding home for children if, for hire, he or it:

(1) Advertises or holds himself or itself out as conducting such a boarding home;

(2) Has in custody or control one child or more under the age of 18, unattended by parents or guardian, for the purpose of providing such child or children with care, food or clothing for compensation.

Homes in which children have been placed by any child placement agency, properly licensed to place children in this State, shall not be regarded as "boarding homes."

342. Powers of Division with respect to boarding homes for children.

Any person or association conducting a boarding home for children and all institutions, agencies, associations or organizations, receiving and placing or caring for dependent, neglected or delinquent minors, including organizations providing care of children whether dependent or otherwise, in lieu of the care and supervision ordinarily provided by parents in their own homes for periods of less than 24 hours a day, must accord the Division or its authorized agents, right of entrance, privilege of inspection and access to its accounts and reports.

A person or association conducting a boarding home for children and all institutions, agencies, associations, or organizations, caring for dependent, neglected and delinquent children shall make reports at such time as is

required by the Division, as to conditions of such boarding home, institution, agency, association or organization, the manner and way in which children are taken care of, former addresses and such other information as will show the social status of the child, how and to whom dismissed, the extent and source of its income, the cost of maintenance, and such other reasonable information as will enable the Division to promote the general welfare of the children and to work out a general program for their care and protection.

The Division may prescribe reasonable standards for the conduct of such boarding home, institutions, agencies, associations or organizations and may license such of these as conform to such standards.

343. Boarding home licenses; investigation; requirements.

(a) Any person conducting a boarding home for children and all such institutions, agencies, associations or organizations must obtain licenses annually from the Division; except, however, those institutions, agencies, associations, or organizations under state ownership and control and maternity wards of general hospitals. In the case of a person conducting a boarding home for children, such licenses shall not be issued to such person until the Division has made a thorough investigation and has determined in accordance with reasonable standards:

(1) the good character of the person applying for the license;

(2) educational and religious needs of the average child.

(b) In the case of institutions, agencies, associations or organizations, before such license is issued, the Division shall make a thorough investigation and favorably pass upon:

(1) the good character and intention of the applicant or applicants;

(2) the present and prospective need of the service rendered;

(3) the employment of capable, trained, and experienced workers;

(4) sufficient financial backing to ensure effective work;

(5) the probability of the service being continued for a reasonable period of time;

(6) whether the methods used and the disposition made of the children served will be to their best interests and that of society.

344. Penalties for violations of subchapter.

Whoever violates a provision of this subchapter shall be fined not more than \$100 or imprisoned not more than 3 months, or both.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

Statutory Authority: 16 Delaware Code,
Section 122(c)(3) (16 Del.C. (c)(3))

IN THE MATTER OF: |

REVISION OF |
REGULATIONS |
CONTAINED IN DSSM |
8205.2, 8304, AND 8305 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has implemented on an emergency basis the below revision of regulations contained in DSSM Section 8000 and is now accepting comments in preparation for adoption of these changes on a permanent basis.

PROPOSED REVISIONS:

8205.2 EXCEPTIONS

The family cap restrictions will not apply in the following cases:

- to an additional child conceived or fathered as a result of incest or sexual assault; or
- to a child who does not reside with his or her parent; or
- to a child that was conceived or fathered in a month the assistance unit (i.e., the entire family) was not receiving ABC. This does not apply in a case that is closed due to sanctioning.

8301.1.4 FAILURE TO COMPLY WITH THE CONTRACT AND THE IMPOSITION OF SANCTIONS

Failures to comply with self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.

8301.3 BENEFIT REDUCTION FOR MULTIPLE SANCTION TYPES

The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be

imposed at the same time. The hierarchy is as follows:

1. If in place, the one-third penalty for failing to meet work and training requirements and the one-third penalty for not cooperating with school or agency officials to meet attendance requirements for dependent children under the age of 16 is first imposed by DCIS.

2. If in place, the \$68 sanction for 16 and over teens who fail to meet school attendance requirements and an additional \$68 for their parents who do not cooperate to remedy the situation is imposed next.

3. If in place, the \$50 sanction for failure to meet enhanced family functioning requirements is the last to be imposed by DCIS.

8304 SELF-SUFFICIENCY REQUIREMENTS - EMPLOYMENT AND TRAINING, WORK, AND COOPERATION TO ENSURE SCHOOL ATTENDANCE BY DEPENDENTS UNDER AGE 16

DSS expects employable adults to participate in either employment or activities related to finding work (e.g. employment and training activities) for AFDC benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses, which are components of the self-sufficiency requirements.

8304.1 REQUIREMENTS FOR SELF-SUFFICIENCY

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. Since parents with children under age 16 are expected to exert more influence over their children, and since early school attendance is so important in moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance. (See section 8305 for requirements and sanctions related to cooperation to ensure school attendance by children over the age of 16).

8304.2 SANCTIONS FOR FAILING TO COMPLY WITH SELF-SUFFICIENCY REQUIREMENTS

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The penalty for noncompliance with any of the self-sufficiency requirements be:

PROPOSED REGULATIONS

- a) for the first offense, a 1/3 reduction in AFDC
 b) for the second offense, a 2/3 reduction in AFDC
 c) for the third offense, a loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

- a) for a first offense, a 1/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
 b) for a second offense, a 2/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
 c) for a third offense, a permanent loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months or until the individual obtains a job of equal or higher pay.

Contract Requirement	Amount/Duration of Sanction	Increase/2 months if not Compliant?
Employment & Training	<u>1/3 reduction for 2 months or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense</u>	Yes
Caretaker cooperation to ensure School Attendance for children under 16 years	<u>1/3 reductions for 2 months or until compliance whichever is shorter; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense</u>	Yes
Keeping a job, unless good cause exists to quit the job	<u>If meeting job search requirements, 1/3 reduction for 2 months or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 months or until enters a job of equal or higher pay whichever is shorter for second offense</u>	No
Keeping a job, unless good cause exists to quit the job	<u>If not meeting job search requirements, full loss of benefits until compliance of either meeting job search requirements or person enters a job of equal or higher pay</u>	N/A

Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.

Example: A person fails to attend the DOL orientation and, prior to a cure, then fails to cooperate with officials to ensure school attendance by his/her 14-year-old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of cash benefits.

8304.3 CURING THE SANCTION FOR SELF-SUFFICIENCY REQUIREMENTS

Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of two weeks. ~~This means clients under 25 must participate in the activity recommended by employment and training staff for a minimum period of two weeks. That activity can be any one of a number of activities from Basic Skills to Work Readiness and Job Search.~~ Clients ~~25 and over~~, unless indicated otherwise, must participate in the work attachment model for a minimum period of two weeks.

EXAMPLE: A ~~25-year-old~~ client fails to keep her initial appointment with Employment and Training staff and is sanctioned. In order to cure this sanction, the ~~25-year-old~~ client must not only keep her appointment with Employment and Training staff, but must also keep her appointment with DOL staff and follow through with her DOL activity for a minimum period of two weeks before the sanction is considered cured.

8305.1 SANCTIONS FOR UNSATISFACTORY SCHOOL ATTENDANCE

A. CHILDREN UNDER AGE 16, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN
The fiscal sanction for failure, without good cause, to meet the school attendance requirements for a child under 16 are the same as for other self-sufficiency requirements. See Section 8304.2.

NOTICE OF COMMENT PERIOD

The Department will receive and consider comments regarding the proposed changes. Such comments must be forwarded by December 31, 1997, to the Director, Division of Social Services, P.O. Box 906, New Castle, DE 19720.

CARMEN R. NAZARIO
 SECRETARY

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

Statutory Authority: 16 Delaware Code,
Section 122(c)(3) (16 Del.C. (c)(3))

IN THE MATTER OF:

REVISION OF REGULATION
CONTAINED IN DSSM 8201

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has implemented on an emergency basis the below revision of regulations contained in DSSM Section 8201 and is now accepting comments in preparation for adoption of these changes on a permanent basis.

NATURE OF PROPOSED REVISIONS:

8201 Time Limit, Temporary Welfare Program

8201.1 Two-Parent Families - Time Limit, Temporary Welfare Program

A) Cash benefits will be time-limited for households headed by two employable adults age 19 or older who are included in the grant. The time limit is forty-eight (48) cumulative months. Families will receive these benefits only through participation in a pay-after performance work experience position or if the adults are working and the family's countable income is below the need standard.

Time limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant,
- the caretaker is age 19 or older,
- the caretaker is employable, and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

B) During the time-limited period, employable adult recipients will receive full cash benefits only as long as they fulfill their Contract of Mutual Responsibility, and participate in a pay-after-performance work experience program or they are working and family income is below

the need-standard of 75% of the Federal Poverty level.

The pay-after-performance work experience position is intended for families who do not have unsubsidized employment. Determine the number of hours of work required by dividing the ABC benefit by the minimum wage. In addition, participants will be required to conduct up to ten (10) hours of job search each week. Failure to comply with the job search requirements will result in an employment and training sanction being applied as described in Section 8303.2.

C) Periodic Alerts to Families Regarding Time Remaining before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

8201.2 Single Parent / Non-Parent Caretaker Families

A) Under A BETTER CHANCE, AFDC cash benefits will be time-limited for households headed by an employable adult age 19 or older who is included in the grant. The time limit is twenty-four (24) cumulative months. Families will receive benefits for an additional twenty-four (24) cumulative months only through participation in a pay-after-performance work experience position or if the adult is working and the family's countable income is below the need standard.

Time limits will not apply when Delaware's unemployment rate exceeds the national average by 2% or when the Delaware unemployment rate is greater than 7.5%.

Time limits apply when four conditions are met:

- the caretaker is included in the grant;
- the caretaker is age 19 or older;
- the caretaker is employable; and
- the unemployment rate does not exceed the national average by 2% or the Delaware unemployment rate is equal to or lower than 7.5%.

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

B) Periodic Alerts to Families Regarding Time Remaining Before the Family Reaches the Time Limit

The Division will track the time remaining before a family's time limits expire and alert the family. The Division will notify families on a quarterly basis of the time they have remaining before the time limits expire.

NOTICE OF COMMENT PERIOD

The Department will receive and consider comments regarding the proposed changes. Such comments must be forwarded by December 31, 1997, to the Director, Division of Social Services, P.O. Box 906, New Castle, DE 19720.

CARMEN R. NAZARIO
SECRETARY

CONTACT:

William M. Remington, Director of Revenue
Division of Revenue
820 North French Street
Wilmington, Delaware 19801
(302) 577-8686
email: wremington@state.de.us

DEPARTMENT OF FINANCE**DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code,
Sections 354 & 563 (30 Del.C. 354, 563)

The following shall constitute Regulations of the Division of Revenue as authorized in 30 Del. C. §§ 354 and 563. The comment period shall run from December 1, 1997, to December 31, 1997, and comments should be addressed to William M. Remington at the above address.

Thirty *Del. C.* § 1306(a) provides for inclusion in the gross estate of "the value of all taxable gifts, as defined in § 1401 of this title, made by the decedent in contemplation of death."

Subsection (b) of that section provides that taxable gifts made within six months of death are presumed to have been made in contemplation of death and also provides that no gifts made more than six months before death are to be treated as having been made in contemplation of death.

The state gift tax is repealed effective for gifts made on or after January 1, 1998. 71 Del. Laws. ch. 130.

The legislative history of ch. 130 does not reveal an intent to alter the treatment of gifts made in contemplation of death and in fact manifests an intention that such treatment continue for purposes of the state inheritance tax. Thus, gifts that are taxable for federal gift tax purposes (i.e., those in excess of the \$10,000 annual per donee exclusion) shall be presumed made in contemplation of death and thereby included in the gross estate if they were made within six months of the donor's death.

This Regulation unless subsequently changed or withdrawn shall be effective for gifts made after December 31, 1997.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF AGRICULTURE**DELAWARE THOROUGHBRED
RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section
10103, 10128(m)(1) (3 **Del.C.** 10103,
10128(m)(3))

ORDER

Pursuant to 29 Del.C. §10118, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating the proposed amendments of Rule 13.16 and Rule 15.02 of the Commission's Rules. Following notice and a public hearing held on September 23, 1997, the Commission makes the following findings and conclusions.:

**SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED**

1. The Commission posted public notice of the proposed revisions to Rules 13.16 and 15.02 in the

Register of Regulations and in the News-Journal and Delaware State News. The Commission received no written comments from the public concerning the proposed regulations.

2. The Commission conducted a public hearing on the proposed Rule amendments on September 23, 1997. The Commission was informed by the Steward Jack Houghton that he was in favor of the proposed amendment to Rule 13.16. The Horsemen's representative Roger Legg also approved of the amendment to Rule 13.16. The Commission notes that the proposed draft of Rule 13.16 was produced with the assistance of the stewards and the horsemen's group.

3. As to Rule 15.02(e), Commission Patterson stated that the Commission should consider allowing all two year old horses to run on lasix in the bleeder program. Commissioner Patterson stated that this is the practice in surrounding states and Delaware will only cause horses to go run in other states by continued enforcement of this rule.

FINDINGS OF FACT

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by

oral testimony on the proposed amendments to Rules 13.16 and 15.02. The evidence received by the Commission is summarized in paragraphs #2 and #3.

5. The commission has considered the comments elicited from the public in the final draft of the rules. The proposed Rule 13.16 would extend the time period for a person with an eliminated stable to claim horses in a new race meet. The rule is consistent with the intent of the Commission's rules and allows for flexibility in the claiming procedures. The Commission finds that the proposed rule is necessary to comply with the statutory authority of the Commission under 3 Del.C. §10103 to regulate the conduct of participants in thoroughbred racing and for the effective enforcement of 3 Del.C. Chapter 101.

6. The Commission find that Rule 15.02(e) should not be adopted in its proposed form. The proposed rule would have allowed two year old horses to enter the Bleeder Program after September of the race meet. This proposal conflicts with the practice in other states and does not appear to be in the best interests of the public and the sport of thoroughbred racing. The Commission will not adopt this proposed Rule 15.02(e) and will renote a new proposed Rule 15.02(e) to delete subsection (e). Since this is a substantive change, the Commission will post renote of the proposed rule change.

CONCLUSIONS

7. The proposed Rule 13.16 was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del.C. §10103.

8. The Commission deems this rule amendment necessary for the effective enforcement of 3 Del.C. chapter 101 and for the full and efficient performance of its duties thereunder.

9. The Commission concludes that the adoption of the proposed Rule 13.16 would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of thoroughbred racing in the State of Delaware.

10. The Commission, therefore, adopts Rule 13.16 as revised and amended pursuant to 3 Del.C. §10103 and 29 Del.C. §10113. The Commission has considered the comments and suggestions made by the witnesses at the public hearing.

11. This adopted Rule 13.16 shall replace in entirety the former Rule 13.16 of the Rules of the Delaware Thoroughbred Racing Commission. The adopted Rule 13.16 now provides as follows:

13.16 Claiming Privileges - Eliminated Stables

If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season,

and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

12. The Commission does not adopt the proposed rule amendment to Rule 15.02(e) and will post notice of a new proposal to delete subsection (e) from this rule.

13. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on December 1, 1997.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
Deborah Killeen, Commissioner

13.16 Claiming Privileges - Eliminated Stables

~~An Owner whose stable has been completely eliminated by claiming shall have the right to claim during the remainder of the meeting at which his stable was eliminated. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim before being eligible to make another claim.~~

If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

**DEPARTMENT OF ADMINISTRATIVE
SERVICES
DIVISION OF PROFESSIONAL
REGULATION
BOARD OF PHYSICAL THERAPY**

Statutory Authority: 24 Delaware Code,
Section 2604 (24 Del.C. 2604)

**ORDER
NATURE OF THE PROCEEDINGS**

Pursuant to 24 Del.C. §2615 and 29 Del.C. §10115

notice was given that the Delaware Examining Board of Physical Therapy (hereinafter "Board") intended to revise its regulations, and that a public hearing would be held on September 2, 1997, at 6:00 p.m. in Dover, Delaware. A quorum of the Board was present for the hearing.

SUMMARY OF THE EVIDENCE

No written comments were submitted to the Board prior to the public hearing. No one appeared before the Board on September 2, 1997, to present written comments or to testify. No written comments were received by the Board within the thirty (30) days following the publication of the public hearing. 29 Del.C. §10118(a).

FINDINGS OF FACT

The Board finds that no comments opposing the proposed revisions or in support thereof were submitted to the Board in writing or orally.

The Board further finds that no changes, substantive or non-substantive, are necessary to the proposed revisions as published in the **Delaware Register of Regulations**, Vol. 1, Issue 2, dated August 1, 1997, at pages 101 through 109. A copy thereof is attached hereto and incorporated herein.

IT IS SO ORDERED this 21st day of October, 1997, that the proposed amendments to the regulations of the Examining Board of Physical Therapy be adopted as written and published, to become effective ten (10) days after this order is published in the **Delaware Register of Regulations**. 29 Del.C. §10118(e).

Carolyn Cotter, Chair
Philip Barkins
Faith K. Hannagan
Lynn Doherty
Bruce Goldsborough
Jeffrey G. Konin
Edward C. Painter
Kathy Watson

DELAWARE STATE EXAMINING BOARD OF
PHYSICAL THERAPY
RULES AND REGULATIONS

SECTION 1: Scope and Objectives (sec. 2601)

SECTION 2: Definitions

- A. Physical Therapy (sec. 2602(1))
- B. Physical Therapist (sec. 2602(2))
- C. Consultation
- D. Direct Supervision of a Physical Therapist with a Temporary License
- E. Physical Therapist Assistant (sec. 2602(3))

- F. Direct Supervision of a PTA
- G. Athletic Training
- H. Athletic Trainer (AT)
- I. Direct Supervision of AT
 - J. Physical Therapy Aide (sec. 2615)
 - K. Direct Supervision of an Aide
 - L. Unprofessional Conduct (sec. 2616(8))

SECTION 3: Board (sec. 2603, 2616)

SECTION 4: Physical Therapists (sec. 2607a)

SECTION 5: Physical Therapist Assistants (sec. 2615)

SECTION 6: Athletic Trainers (sec. 2602)

SECTION 7: Physical Therapy Aides (sec. 2615)

SECTION 8: Admission to Practice: License by Examination (sec. 2608)

SECTION 9: Continuing Education Units (sec. 2606)

SECTION 10: Admission to Practice: License by Reciprocity (sec. 2610)

SECTION 11: Temporary Licensure (sec. 2611)

SECTION 12: Foreign Trained Applicant for Licensure (sec. 2606(b)(2))

SECTION 13: Reactivation of Licensure (sec. 2607b)

SECTION 14: Disciplinary Action (sec. 2616)

RULES AND REGULATIONS

SECTION 1: SCOPE AND OBJECTIVES

Under 24 Del.C. Chapter 26 (The Practice Act), a State Examining Board of Physical Therapists is created to meet the following objectives:

- A. to protect the general public,
- B. to maintain minimum standards of practitioner competency, and
- C. to maintain certain standards in the delivery of service to the public.

The Board regulates the practice of Physical Therapists (PTs), Physical Therapist Assistants (PTAs) and Athletic Trainers (ATs) in the State of Delaware.

SECTION 2: DEFINITIONS

A. The definition of "Physical Therapy" by Delaware Law is provided by the Practice Act, 24 Del.C. sec. 2602(1). Physical Therapy includes the performance and interpretation of tests and measurements of bodily function as an aid in the examination, evaluation or treatment of any human conditions. Physical therapy does not include the practice of Athletic Training as defined in Subsection 4.A., Section 2602, Chapter 26, Title 24.

B. Physical Therapist or PT means a person who is licensed under Chapter 26 to practice Physical Therapy.

C. Consultation

(1) Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy

after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these Rules and Regulations or in the Physical Therapy Law that limits the number of consultations the physical therapist can make on the patients behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the physical therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with Section 2616(8) of this chapter which deals with referral for profit. If no physician consult has been made in this initial thirty day period then treatment must be terminated. A patient is not to receive physical therapy from the same practitioner, for the original complaint, during the 6 months following discharge unless he or she has a physician referral.

(2) Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

D. Direct supervision in connection with a PT practicing under a temporary license means 1) a licensed PT supervisor shall be on the premises when the individual with a temporary license is practicing and 2) evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed PT supervisor.

E. Physical Therapist Assistant or PTA means a person who is licensed under Chapter 26 to assist licensed Physical Therapists.

~~F. Direct supervision in connection with a PTA or an AT means a PT shall be on the premises at all times and see each patient.~~

F. Supervision

19. Direct supervision in relation to a PTA with less than one (1) year experience means a PT shall be on the premises at all times and see each patient.

20. Direct supervision in relation to a PTA with one (1) year or more experience means that a PTA must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks whichever occurs first. The supervising PT must have at least one (1) year clinical experience. The PT must be available and accessible by telecommunications to the PTA during all working hours of the PTA.

3. The PT is responsible for the actions of the PTA when under his/her supervision. All supervision must be documented.

G. The definition of "Athletic Training" by Delaware Law is provided by the Practice Act, 24 Del.C. sec. 2602(4).

Athletic Training means and includes: (1) prevention of athletic injuries, (2) recognition and evaluation of athletic injuries, (3) management, treatment, and disposition of athletic injuries, (4) rehabilitation of athletic injuries, (5) organization and administration of athletic training programs, and (6) education and counseling of athletes regarding a program(s) of athletic training. Athletic Training shall also include prevention, conditioning, and reconditioning of non-athletic injuries as defined by law and in regulation by the Board.

H. Athletic Trainer or AT means a person who is licensed under Chapter 26 and is defined by the Practice Act 24 Del.C. sec. 2602(5).

I. Direct supervision in connection with an AT means a PT shall be on the premises at all times in a clinical setting and see every patient.

J. On site or on premises, in connection with supervision of a PTA or AT means that the PTA or AT must be in the same physical building as the supervising PT. On site or on premises does not refer to attached buildings.

~~J. K.~~ Physical Therapy Aide or aide or technician means a person who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed physical therapist or physical therapist assistant. There shall be documented evidence of sufficient inservice training to assure safe performance of the duties assigned to the aide.

~~K. L.~~ Direct supervision in connection with an aide means a licensed physical therapist or physical therapist assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

~~L. M.~~ Unprofessional Conduct. A Physical Therapist, PTA, or AT whose behavior fails to conform to legal standards and accepted standards of their profession, and who thus may adversely affect the health and welfare of the public, may be found guilty of unprofessional conduct. Such unprofessional conduct shall include, but not be limited to, the following:

1. Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

2. The PT who knowingly allows a PTA to perform prohibited activities may be guilty of unprofessional conduct.

3. The PTA who knowingly performs prohibited activities may be guilty of unprofessional conduct.

~~2. 4.~~ Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

~~3. 5.~~ Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

~~4. 6.~~ Inaccurate recording, falsifying, or altering a

patient or facility record.

~~5:~~ 7. Committing any act of verbal, physical, mental or sexual abuse of patients.

~~6:~~ 8. Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these Rules and Regulations.

~~7:~~ 9. Failing to supervise individuals to whom physical therapy tasks have been delegated.

~~8:~~ 10. Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

~~9:~~ 11. Violating the confidentiality of information concerning the patient.

~~10:~~ 12. Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

~~11:~~ 13. Practicing physical therapy as a PT or PTA or athletic training as a trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

~~12:~~ 14. Practicing as a PT, PTA or AT when physical or mental ability to practice is impaired by alcohol or drugs.

~~13:~~ 15. Diverting drugs, supplies or property of a patient or a facility.

~~14:~~ 16. Practicing physical therapy or athletic training as a PT or AT and/or practicing under the supervision of a PT as a PTA or AT when a license has expired.

~~15:~~ 17. Allowing another person to use his license.

~~16:~~ 18. Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a PT, PTA or AT.

~~17:~~ 19. Impersonating any applicant or acting as proxy for the applicant in a PT, PTA, or AT licensing examination.

~~18:~~ 20. Continues to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

~~19:~~ 21. Modifies a treatment prescription without consulting referring physician.

~~20:~~ 22. Failing to comply with the Mandatory Continuing Education Requirements of 24 Del.C. sec. 2606(a)(4) and Section 9 of these rules and regulations.

~~M:~~ N. Examination means the approved examination (see Section 7.3).

SECTION 3: THE STATE EXAMINING BOARD OF PHYSICAL THERAPISTS

SECTION 3.1: The Board shall consist of nine members

who shall be residents of Delaware and who shall be appointed by the Governor. A list of professional nominees shall be submitted to the Governor by the President of the Delaware Chapter of the American Physical Therapy Association (APTA). Each of the four PT Board members shall be a licensed PT, have a least three years experience immediately preceding his appointment, and be actively engaged in Physical Therapy during his/her incumbency. Three members shall be consumers, one shall be a registered PTA and one shall be a registered AT.

SECTION 3.2: The Board shall be composed of a Chairperson, Vice-Chairperson, Secretary, and six members. Elections shall be held annually.

SECTION 3.3: Each member of the Board shall receive compensation for each day actually engaged in the discharge of his duties. The compensation shall be a reasonable amount based on the time spent on work pertaining to the affairs of the Board in accordance with the limitations imposed by the State.

SECTION 3.4: The Board shall have the authority to review, revise, adopt and administer the Rules and Regulations in accordance with the Administrative Procedures Act, and shall have the authority to perform the following:

A. Approval of qualified applicants for examination and for reciprocity.

B. Issuance of licenses and registrations through the Division of Professional Regulation to Applicants who are qualified under these Rules and Regulations.

C. Refer to the Division of Professional Regulation and assist in the investigation of individuals who are charged with violation of legal, moral, or ethical propriety. The Board may refuse to grant or may revoke a PT, PTA or AT license if the PT, PTA or AT:

1. has found to misuse drugs or alcohol;
2. has been convicted of a state or federal law related to the use, sale or possession of drugs;
3. has obtained or attempted to obtain a license by fraud or material misrepresentation;
4. is guilty of any act derogatory to the standing and ethics of the profession of Physical Therapy or athletic training;
5. is unable to practice as a competent PTA, AT or Physical Therapist because of a physical or mental condition;
6. is guilty of unprofessional conduct;
7. otherwise violates 24 Del.C. Chapter 26.

D. The Administrative Assistant provided to the Board by the Division of Professional Regulation shall maintain the meeting records and a register of current valid licenses which shall be available for public examination. The Administrative Assistant shall also keep other records pertinent to the operation of the Board.

E. Communication with the Delaware Chapter of the APTA. The Chairperson shall represent the Board at the Chapter's official meeting. The AT member shall represent the Board at NATA's official meeting.

F. Performance of all other necessary acts consistent with the Law to administer these Rules and Regulations and enforce 24 Del.C. Chapter 26.

G. Specific duties of the officers:

The Chairperson:

1. Shall call meetings of the Board at least twice a year. A majority of the Board shall have the authority to call a meeting.

2. Shall arrange for the location of the examination and appoint a proctor with the approval of the Division of Professional Regulation.

3. Shall represent the Board in all official functions and act as Board spokesperson.

The Vice-Chairperson:

1. Shall substitute for the Chairperson during the officer's absence.

2. Shall maintain a file on amendments to the regulations.

3. Shall receive information (in conjunction with the Administrative Assistant).

The Secretary:

1. Shall perform clerical duties of processing applications, requesting required information for reciprocity and administering the examinations.

2. Shall maintain a liaison with the Division of Professional Regulation, which provides services of printing, mailing and record keeping.

3. Shall receive information from the applicant for granting a license for the applicant.

4. Shall compile the Board's decisions and take action on the decisions as the Board requests.

5. Shall be responsible together with the Division of Professional Regulation for the preparation, communication, and distribution of official forms used in the operations of the Board.

6. Shall arrange reviews of foreign-trained applicants.

SECTION 4: PHYSICAL THERAPISTS

SECTION 4.1: The Physical Therapy license issued to qualified professionals does permit them to treat any person.

SECTION 5: PHYSICAL THERAPIST ASSISTANTS

SECTION 5.1: The PTA may treat patients only under the ~~direct supervision~~ direction of a PT as defined in Section 2.F. The PTA may perform physical therapy procedures and

related tasks that have been selected and delegated by the supervising PT. The PTA may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The PTA may make minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the PTA to perform the selected and delegated tasks shall be assessed by the supervising PT. The PTA shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the PTA or without proper supervision.

SECTION 6: ATHLETIC TRAINERS

SECTION 6.1: The athletic trainer functioning in the non-clinical setting may evaluate, treat, and provide appropriate first aid to injuries incurred by the athlete during participation in or training for scholastic, professional, or sanctioned amateur athletic activities. All treatments for injuries to athletes require a physician's referral, except for minor sprains, strains, and contusions, first aid excluded. Evaluation and/or treatment by the athletic trainer to supportive staff, spectators, and other persons other than the athlete shall be limited to first aid. An athletic trainer functioning in a clinical setting may use therapeutic exercises and modalities such as heat, cold, light, air, massage, water, sound, and electricity, for the treatment of musculoskeletal injuries. The athletic trainer may also provide first aid in the clinical setting. All treatment by the athletic trainer in a clinical setting must be performed while under the direct, on-site supervision of a physical therapist. The AT may make minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the AT to perform the selected and delegated tasks shall be assessed by the supervising AT. The athletic trainer in a clinical setting may not independently initiate, modify, or discharge a patient's program.

SECTION 6.2: The PT who knowingly allows an AT to perform prohibited activities may be guilty of unprofessional conduct.

SECTION 6.3: At no time may a PT supervise more than 2 PTAs, 2 ATs or 1 PTA and 1 AT. A PT may only supervise 1 PTA off site. ATs must be supervised on site.

SECTION 7: PT AIDES

SECTION 7.1: Treatments which may be performed by aides under direct supervision are:

- A. gait practice and ambulation
- B. functional activities
- C. transfers
- D. routine follow-up of specific exercises
- E. hot or cold packs
- F. whirlpool/Hubbard tank
- G. contrast bath
- H. infrared
- I. paraffin bath
- J. developmental stimulation
- K. ultra sound

SECTION 7.2: Exceptions - An aide may perform:

- A. non-treatment related activities, such as secretarial, clerical, and housekeeping duties without direct supervision,
- B. patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and
- C. set up and preparation of patients requiring treatment using PT modalities.

SECTION 7.3: Prohibited Activities - An aide may not perform:

- A. evaluation, or
- B. treatments other than those listed in Section 7.1.

SECTION 7.4: The PT or PTA who knowingly allows a PT aide to perform prohibited activities may be guilty of unprofessional conduct.

SECTION 7.5: An aide who violates these regulations shall be considered by the Board to be practicing in violation of the Practice Act.

SECTION 8: ADMISSION TO PRACTICE: LICENSE BY EXAMINATION

SECTION 8.1 Applications, copies of the Rules and Regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

SECTION 8.2: Applicants for PT or PTA licensure shall not be admitted to the examination without the submission of the following documents four weeks prior to the examination date:

A. Professional Qualifications - proof of graduation (official transcript) from an educational program for the PT or PTA which is accredited by the appropriate accrediting agency as set forth in the Practice Act. If the applicant graduated from a school prior to 1936, the school shall have been approved by the APTA at the time of graduation.

B. A fee in check or money order payable to the State of Delaware (Appendix I: Fee Schedule).

C. A completed application form. (Appendix II: Application Form).

SECTION 8.3: ~~The Board shall conduct examinations at least twice a year for PTs and PTAs.~~ Any United States citizen applicant taking the PT or PTA exam must show legal proof of identity, such as a driver's license or passport. The proof of identity must have a picture and signature. The Board may use the PT and PTA examination endorsed by the APTA, the Federation of State Boards of Physical Therapy or National Athletic Trainers Association. AT candidates must pass the Certification Examination endorsed by National Athletic Trainers' Association (NATA). Uniform national test dates will be used if available.

SECTION 8.4: All applicants for licensure as a PT or PTA must successfully pass the examination described in Section 8.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy. The passing score for each examination shall be determined by the Board point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800. All sections of the examination shall be passed. In case of failure, the applicant may take a second examination after submitting the applicable fee. Only sections failed must be repeated. The second examination shall be taken after six months and within two years from the date of the first examination. If the applicant fails any subsequent examination, the applicant must show satisfactory proof to the Board that he/she has taken Board approved corrective action (e.g. refresher course) before being allowed to take the examination again.

SECTION 8.5: Applicants for licensure as an AT must submit to the Board the following:

A. Professional Qualifications - proof of graduation (official transcript) from an educational program accredited by the appropriate accrediting agency.

B. A passing grade on the Professional Certification Examination as determined by the National Athletic Trainers Association (NATA).

C. All sections of the examination shall be passed.

D. A check or money order made payable to the State of Delaware, as noted on the application form.

E. The completed application form.

SECTION 8.6: Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

A. completed renewal application form

B. applicable fee, and

C. for individuals seeking relicensure evidence of continuing education courses as provided by Section 9.

SECTION 9: MANDATORY CONTINUING EDUCATION UNITS (CEU's)

SECTION 9.1: Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. ~~The CEU's reports will be randomly audited~~ CEU Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 1st every even numbered year and shall be received every 2 years after such date.

SECTION 9.2: Individuals shall maintain the following items in order to receive credit for CEU's:

- A. name of applicant at seeking renewal
- B. license classification (PT, PTA, AT)
- B: C. license number of applicant
- C: D. proof of attendance at CEU course
- D: E. date of CEU course
- E: F. instructor(s) of CEU course
- F: G. sponsor of CEU course
- G: H. title of CEU course
- H: I. number of hours of CEU course

SECTION 9.3: Continuing Education Regulations, 24 Del.C. sec. 2607. Licenses shall expire biennially on January 1st and may be renewed upon submission of a renewal application provided by the Board and payment of a renewal fee along with evidence of continuing education courses as may be required by the Rules and Regulations set forth by the Board. Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants and Athletic Trainers become more effective and efficient in achieving their objectives.

A. For a licensee to renew a license, documentation of three continuing education units over the two year period immediately preceding application are required for renewal. CEU requirements shall be prorated for new licensees if application is made by examination only. If the license is granted during the six month period shown below, the following will be required for renewal:

<u>Odd Numbered Year</u>	<u>Even Numbered Year</u>
1/1- 6/30 2.5 CEUs	1/1- 6/30 1.5 CEUs
7/1-12/31 2.0 CEUs	7/1-12/31 .5 CEUs

Applicants who are issued licenses via endorsements will be required to complete the full requirements for continuing education units prior to the next renewal time.

- B. One CEU will be given for every 10 hours of an

approved continuing education course. (1 contact hour = .1 CEU). Each course must be in a field of health care relevant to include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. ~~Sponsors and licensees shall receive prior written approval of CEU courses from the Board.~~ Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU requirements may not be carried over from one biennial period to the next one.

C. At the time of license renewal, the appropriate forms will be supplied by the Board. ~~(Appendix III: CEU Form).~~ Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. The ~~CEU Activity Record (CEUAR)~~ must be received by the Board no later than 60 days prior to license expiration. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. All questionable CEUAR's will be investigated re-evaluated.

D. ~~The Board shall not issue a permanent license to any licensee who has failed to complete his/her CEU requirement. The Board may issue a temporary license to an individual who has failed to complete his CEU requirement which may be valid for a maximum of six months. A PT, PTA or AT who has failed to complete his/her DEU obligation in a timely fashion may complete such obligation while holding a temporary license. After six months, a permanent license will be re-issued after the submission of proof that the required CEUs were completed and a new application fee and form are submitted.~~ In the event a licensee shall fail to complete the required credits at the end of the applicable period, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 9.3. C. is accompanied by a specific plan for making up the deficiency of necessary credits within 120 days after the date the CEUAR is signed by the licensee. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later than 15 days following the end of the 120 day period. Failure to complete the specific plan within the 120 day period may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 2.M. 22.

- E. The Board has the power to waive any part of the

entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 1st of the end of the respective CEU term. The Board will decide the merits of each individual case.

F. CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and inservices oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings. ~~but may not be of a narrow procedural or administrative nature.~~

G. Examples of acceptable continuing education which may be approved by the Board fall under the following categories:

- ~~1. Approved continuing education courses/workshops/seminars/in-services.~~
 - ~~2. professional meeting chapter educational meetings, national conferences, medically oriented programs, etc. (Proof of attendance)~~
 - ~~3. university/college courses~~
 - ~~4. passing licensing examination (1.5 CEUs)~~
 - ~~5. approved self studies (not to exceed 1.0 CEUs)~~
- ~~(It is the candidates responsibility to secure all documentation):~~
- ~~6. First time presentation of professional-oriented course:~~

1. professional meetings*. To include:
national, state, chapter (not to exceed 2.0 CEU's)
2. seminars/workshops*
(not to exceed 2.5 CEU's)
3. university/college courses
1.0 CEU for semester
0.8 CEU for trimester
0.7 CEU for quarter
4. staff/faculty inservices* (not to exceed .5 CEU's)
5. passing of licensing examination (1.5 CEU's)
6. first time presentation of professionally oriented course/lecture* (0.3 CEU/hour, not to exceed .6 CEU's per presentation, not to exceed 1.2 total)
7. original publication in peer reviewed publication (.3 CEU's)
8. original publication in non-peer reviewed publication (.1 CEU's)
9. approved self studies*. To include:
(not to exceed 1.0 CEU's)
videotapes, if:
- there is a sponsoring agency
- there is a facilitator or program official present

- the program official is not the only attendee
- correspondence course, if:
includes certificate of completion by sponsoring agency

(not to exceed 1.0 CEU's)

10. Holding of an office, to include:
- executive officer's position for the national or state professional associations (Pres, VP, Sec, Treas)
- member, Examining Board of Physical Therapy (.3 CEU's)

11. Acting as the direct clinical instructor providing supervision to a PT, PTA or AT student officially enrolled in an accredited institution during an internship (40 contact hours = .1 CEU, not to exceed .5 CEU's)

* The Board will determine the appropriate number of contact hours.

~~At least two CEUs from category 2 is required biennially. Questions and concerns should be directed in writing to the State Examining Board of Physical Therapists, Division of Professional Regulation.~~

SECTION 10: ADMISSION TO PRACTICE

Licensure/Registration by Reciprocity :

Definition - The granting of a license or registration to an applicant who meets all the requirements set forth in this section and who holds a valid current license/registration in another state, territory, or the District of Columbia.

SECTION 10.1: The reciprocity applicant shall submit the documentation listed in Section 8.2 or 8.5.

SECTION 10.2: The reciprocity applicant shall submit proof that he/she is currently licensed or registered as a PT, PTA or AT by a regulatory body of another state, territory or the District of Columbia, including a copy of his valid current license/registration issued by such regulatory body; and that the standards for licensure or registration by such regulatory body were substantially equivalent to the standards for licensure in Delaware at the time of the applicant's licensure. An applicant shall be deemed to have satisfied this Section upon evidence satisfactory to the Board that he has complied with the standards set forth below:

A. The PT or PTA applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was initially licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those PTs and PTAs having taken the examination prior to 1990. For the AT candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/

she was currently licensed/registered or from the Interstate Reporting Service (IRS). From PT applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

1. Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or
2. other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

SECTION 10.3: The AT seeking reciprocity shall meet all criteria in Section 8.5.

SECTION 11: TEMPORARY LICENSURE (four situations)

(Appendix V: Temporary License Form)

A. PT and PTA applicants waiting to take the examination. The Board may issue a temporary license to applicants who have submitted to the Board the documents listed in Section 8.2 and Section 8.5 respectfully who have been determined by the Board to be eligible to take the examination. The Board shall accept a letter signed by the applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. Such applicants may practice only under the direct supervision of a licensed Physical Therapist. The license shall remain effective for two months after the examination date. It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant who has passed the examination may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.

B. Applicants requesting reciprocity as a PT, PTA, and AT. The Board may issue a temporary license to an applicant upon the applicant's compliance with all requirements listed in Section 8.2 and 8.5, provided that submission of the applicant's examination scores shall not be required. The temporary license shall not be renewable. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

C. Applicants engaged in a Special Project. The Board may issue a temporary license to applicants practicing in the State on a temporary basis in order to: 1) assist in a medical emergency, or 2) engage in a special project or teaching

assignment, provided that the applicant complies with the requirements of Section 8.2 or 8.5. The temporary license may remain in effect for a maximum of one year from the date of issuance. It may be renewed once.

1. An AT certified by NATA, or licensed by the State where the professional is employed may practice athletic training in Delaware, if he/she is in Delaware with a visiting team, or an athlete, and only in a non-clinical setting.

D. Applicants who have failed to complete the CEU requirements. The Board may issue a provisional license to a PT, PTA or AT who has failed to complete his CEU requirement in a timely fashion for good cause but is otherwise eligible for relicensure. The provisional license is not renewable.

SECTION 12: FOREIGN TRAINED APPLICANT FOR LICENSURE

Applicants for licensure who are graduates of a PT, PTA school or AT program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

SECTION 12.1: The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. ~~The foreign trained candidate must also submit proof that he/she has met all the qualifications for licensure and has been licensed as a physical therapist in the country of education. The program shall have a curriculum determined by the Board to be equivalent to the curriculum required by the appropriate accrediting agency recognized by the U.S. Commissioners of Education and/or the Council on Postsecondary Accreditation. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards. See addendum.~~ The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of three independent agencies:

International Educational Research Foundation,
Inc.
P.O. Box 24679
Los Angeles, CA 90024

International Consultants of Delaware, Inc.
5 Barksdale Road
Newark, DE 19711

Educational Credential Evaluators, Inc.
P.O. Box 92970
Milwaukee, WI 53202-0970

SECTION 12.2: The applicant shall complete the

requirements of Section 8.2 or 8.5.

SECTION 12.3: The applicant shall pass the examination described in Sections 8.3 and 8.4.

SECTION 13: THE BOARD SHALL KEEP AN INACTIVE REGISTER.

Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register. The Board may reactivate an inactive license upon receipt of the following:

- A. a written request for reactivation;
- B. the applicant for licensure as a PT, PTA or AT that has been actively engaged in the practice for the past five years. The applicant for registration as a PTA has been actively engaged in the assistance of a licensed PT for the past five years. If the applicant for licensure/registration has not met this condition, the following requirements shall be completed:
 1. he/she shall work under the direct supervision of a PT/AT in Delaware for a minimum of six months. The supervising PT/AT shall certify to the completion of the six month applicant's clinical competence on forms supplied by the Board (Appendix IV);
 - C. Applicable renewal fee;
 - D. notice of intent to resume practice of Physical Therapy in Delaware, and
 - E. proof of completion of 1.5 CEUs during the previous 12 months.

SECTION 14: DISCIPLINARY ACTION SHALL BE TAKEN ACCORDING TO TITLE 29, CHAPTER 88

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code
Section 122 (14 **Del.C.** 122)

REGULATORY IMPLEMENTING ORDER

READOPTION OF REGULATION, MEMBERSHIP IN FRATERNITIES AND SORORITIES

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulations entitled, Membership in Fraternities

and Sororities, found in the *Handbook for K-12 Education*, I.K.8., Pages A-33 and 34 should be readopted. These regulations forbid any public school student from becoming a member of any fraternity or sorority or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organization rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization. These regulations also authorize local school districts to take certain actions concerning the existence of such fraternities and sororities and/or any pupils who belong to them. Because this is still a potential problem for local school districts readopting the regulation is necessary. Notice of the proposed re-adoption of this policy was published in the News Journal and the Delaware State News on October 13, 1997, in the form attached as Exhibit A. No comments were received regarding readopting these regulations.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that these regulations, Membership in Fraternities and Sororities, should be readopted because this is still be an important issue in local school districts and there needs to be a unified statewide position on the issue to insure that students' rights are preserved concerning their membership in student organizations.

III. DECISION TO READOPT REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that these regulations should be readopted. The proposed regulations are necessary to preserve student rights as to their membership in student organizations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby readopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the amendment hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations as readopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in section I.K.3. in the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary and the State Board of Education pursuant to 14

Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on November 20, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of November, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 20th day of November, 1997.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

AS AMENDED

I. K. 8. 3. MEMBERSHIP IN FRATERNITIES AND SORORITIES

a. No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization.

b. The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.

c. Nothing in this regulation shall be deemed as prohibiting the local board of education from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.

d. Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult

leadership and supervision.

e. Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:

(1) establishment of the purposes and criteria for membership in the organization;

(2) establishment of guidelines to be followed in the selection of members; and

(3) establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This procedure assures that students are made aware of the reasons for non-admittance to membership selectivity.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code
Section 122 (14 Del.C. 122)

REGULATORY IMPLEMENTING ORDER

AMENDMENT TO INTERSCHOLASTIC ATHLETICS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The regulations on Interscholastic Athletics found in Section I.K.6., Page A-32 in the *Handbook for K-12 Education* must be amended to reflect the new language in H.B. 81 concerning the role of the Secretary of Education and the State Board of Education in relation to the Delaware Secondary School Athletic Association (DSSAA). The new legislation states that the Secretary with the consent of the State Board may delegate to a nonprofit organization the authority to implement the Department's rules and regulations on interscholastic athletics. These amended regulations delegate this authority to the Delaware Secondary School Athletic Association (DSSAA) and define DSSAA's relationship with the Secretary and the State Board. The amended regulations also define, as the original regulations did, DSSAA's structure and its relationship with the building principals. Notice of the proposed amendment was published in the News Journal and the Delaware State News on October 13, 1997, in the form attached as Exhibit A. No comments were received regarding the proposed amendment.

II. FINDINGS OF FACT

The Secretary with the consent of the State Board of Education finds that these regulations must be amended to reflect the new language in H.B. 81, in order to formalize the relationship between the DSSAA and the Secretary and the State Board.

III. DECISION TO AMEND REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude that the proposed regulations are necessary to reflect the new language in H.B. 81. Therefore, pursuant to 14 Del. C., Section 122 the amendments attached hereto as Exhibit B are hereby adopted. Pursuant to 14 Del. C., Section 122(e) the amendments hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the amendments adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Handbook for K-12 Education*, Section I.K.2.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary and the State Board of Education pursuant to 14 Del. C., Section 122 in open session at the said Board's regularly scheduled meeting on November 20, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of November, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 20th day of November, 1997.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Handbook for K-12 Education

I. K. 2.

6. INTERSCHOLASTIC ATHLETICS**a. Responsibility**

~~The principal of the middle level and the high school is responsible for the conduct of the interscholastic athletic program in which representative teams participate. The extent of the athletic program for the secondary school necessitates leadership consideration and coordination on part of the principal and staff members responsible for the organization and scheduling of individual and team sports.~~

b. Jurisdiction

~~Interscholastic athletics are under the jurisdiction of the Delaware Secondary School Athletic Association composed of all member schools. The Athletic Association is under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Public Instruction serving as the Executive Secretary. All policies and recommendations for modifying the rules and bylaws of the Athletic Association must be approved by the State Board of Education.~~

c. Rules

~~All interscholastic athletic activities in the middle level and high schools must be conducted in accordance with the rules and regulations established in the Official Handbook of the Delaware Secondary School Athletic Association and subscribed to by all member schools.~~

As Amended

6. INTERSCHOLASTIC ATHLETICS

a) The Delaware Secondary School Athletic Association (DSSAA) shall, as the official designee of the Secretary of Education, have the authority to implement the Department of Education's rules and regulations governing the conduct of interscholastic athletics. This authority is granted with oversight by the Department of Education. Disputes involving the rules and regulations governing interscholastic athletics are subject to State Board review.

b) The Delaware Secondary School Athletic Association shall be under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Education serving as the Executive Director. All recommendations for modifying the rules and regulations as they appear in the DSSAA Official Handbook must be proposed by the Secretary of Education and approved by the State Board of Education with the advice and guidance of the DSSAA Board of

Directors.

c)The principals of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individual and team sports.

d)All interscholastic athletic activities in the middle level and high school must be conducted in accordance with the Department of Education's rules and regulations as they appear in the DSSAA Official Handbook and as they may be amended hereafter as proposed by the Secretary of Education and approved by the State Board with the advice and guidance of the DSSAA Board of Directors.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code
Section 122 (14 Del.C. 122)

REGULATORY IMPLEMENTING ORDER

REPEAL OF REGULATIONS CONCERNING STUDENT ACTIVITIES

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The following regulations concerning student activities found in the *Hand book for K-12 Education*, Section I.K.2., K.3., K.4., K.5., and K.7., on pages A-28 to A-32 should be repealed. These regulations include the following: Local Financing of School Activities, K.2., General Guidelines for Contests and Activities, K.3., Guidelines from the National Association of Secondary School Principals (NASSP) for Student Contests and Activities, K.4., Student Travel Procedures and Activities, K.5., and Student Organizations, K.7. These regulations, as presently written, are general in nature and mainly make statements about desired behaviors. Regulations in this area are best made by the local boards of education who are much closer to the specific situations in each district. Notice of the proposed repeal of these regulations was published in the News Journal and the Delaware State News on October 13, 1997 in the form attached as Exhibit A. No comments were received regarding the proposed repeal of these regulations.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find

that these regulations concerning student activities should be repealed because the existing regulations are general in nature and mainly make statements about desired behaviors and because these types of regulations should now and in the future be made by local boards of education who are closer to the specific situations in each district.

III. DECISION TO REPEAL REGULATIONS

For the foregoing reasons, the Secretary and the State Board of Education conclude these regulations should be repealed. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby repealed.

IV. TEXT AND CITATION

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the *Handbook for K-12 Education*, Section I.K.2, 3. 4, 5, and 7.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary and the State Board of Education pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on November 20, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of November, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 20th day of November, 1997.

STATE BOARD OF EDUCATION

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~~K. STUDENT ACTIVITIES, ATHLETICS AND ORGANIZATIONS~~

~~2. LOCAL FINANCING OF SCHOOL ACTIVITIES~~

~~School activities which are not financed by the regular school allotment must be paid for by funds which are raised~~

locally. Since many of these activities are of importance to the school and are highly desirable, it would be far better if they could be paid out of the regular instruction allotment, but that is sometimes impossible. If funds are raised locally by means other than taxation, the following guidelines must be followed:

a. Public education is provided free of charge to students. This includes admission to any functions held during the time when the schools are in session.

b. It is essential that adequate accounting procedures exist for student activity funds. Such records must be open for inspection by interested parties at all times.

c. Any fund raising activities must be approved by the chief school officer of the district.

d. All funds collected shall be kept in a safe repository where accounting can be made at regular intervals and shall be handled in accordance with the provisions of the State of Delaware Budget and Accounting Manual.

3. GENERAL GUIDELINES FOR CONTESTS AND ACTIVITIES

The following general guidelines are recommended to serve as an appropriate frame of reference:

a. No school should enter any national contest except those approved by the National Association of Secondary School Principals or approved Advisory Committees appointed by the Department of Public Instruction.

b. Local contests should have the approval of the school principal and school superintendent on behalf of the local board of education.

c. Participation in any contest or competition should be outside class time unless considered as part of the curricular activities.

d. The "Guidelines" established by the NASSP as contained in the Approved List of National Contests and Activities should be followed in the selection and conduct of national, state, and local contests and activities.

e. Nothing in this section shall preclude the conduct of contests and activities on a county or regional basis provided all parties concerned have granted approval for such participation.

f. Ad hoc committees may be organized from time-to-time to consider procedures for the conduct of special contests or competition.

4. GUIDELINES FROM THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS (NASSP) FOR STUDENT CONTESTS AND ACTIVITIES

The National Association of Secondary School Principals through its Committee on National Contests and Activities has established guidelines regarding contests

and activities which involve student participation in seven or more states. These guidelines, prepared as part of the Advisory List of National Contests and Activities, are as follows:

a. A contest or activity should be designed solely to benefit secondary school youth in educational, civic, social, and ethical development. Statements expressing: (1) the educational benefits anticipated to accrue to participating students; (2) the educational objectives the activity is designed to serve; and (3) justification of the activity as a needed and functional means of serving schools and students and as expressed in (1) and (2) are to be submitted with the sponsor's application.

b. Cost of participation must be minimal to the student, school, and community. No profit should be realized at the expense of the participant. Contests and activities that are profit-oriented or tend to promote or advertise a product or an ideology will not be listed. A financial accounting, giving specific per pupil or per school cost estimates in such areas as administration, promotion, housing, travel, food, entertainment, health and recreation, and other incidental expenses, shall be submitted to the committee to demonstrate that no profit is made from sponsorship.

c. Contests and activities that motivate students to be creative and to demonstrate excellence are encouraged.

d. Contests and activities must be open to all students, regardless of race, creed, sex, or national origin. The eligibility of a student to participate shall not depend upon an individual teacher's membership in the sponsoring organization.

e. Contests and activities must provide for appropriate and adequate supervision for the duration of the event.

f. Contests and activities must not place an undue burden on students, professional staff, or schools. The involvement of teachers and/or principals in the selection or judging process is discouraged where there is a conflict of interest.

g. Team or delegate competitive events are strongly discouraged on a national level.

h. Contests and activities should be held on nonschool time (weekends, vacation, etc.). When a group of students and/or teachers from a school are involved, regional contests and activities will, in most instances, not be listed when more than one day of absence from school is required for participation; and national contests and activities will not normally be listed when more than two days of absence from school are required. Contests and activities that utilize school time or involve extensive travel by students or supervising teachers must be evaluated in terms of the benefits to all students affected by the loss of instructional time.

i. Awards should be appropriate in number, kind, and value and must comply with the state amateur eligibility requirements. Scholarships are regarded as the most desirable type of award, and should be paid directly to the institution selected by the student.

j. Unsupervised essay and poster contests will not be listed.

k. Activities designed primarily to raise funds for groups or individuals will not be considered.

l. Adjudication and competitive programs involving cheerleading, pompon, drill teams and spirit groups beyond the state level are strongly discouraged and will not be listed.

m. Because of the number of students involved, commitment of faculty time, cost in comparison to the educational benefits, and exposure of the school to liability, schools should very carefully consider any proposal to participate in a group music festival. The Committee, while wishing to support music education, often finds that music festivals and music-travel programs, particularly those tied to theme/amusement parks or highly attractive tourist areas, warrant additional and special standards for review. Therefore, the Committee will consider listing music festivals and music-travel programs, if they meet the following additional guidelines:

(1) Music programs should be scheduled so that no absence from regularly scheduled classes is involved for students or teachers. In most instances no program will be listed by the Committee if in its estimation more than two school days, including travel, are required for participation.

(2) The arrangements for travel, housing, and meals for participants shall not be mandated by the sponsor. Any such arrangements offered by the sponsor must be purely an option available to schools as a service. Activities sponsored by travel agents/bureaus must stipulate in their announcements that schools may arrange their own travel or arrange travel packages through travel agents of their own choice.

(3) The amount of time spent by participating groups in musical performance, instruction, and evaluation must be substantial in relation to the total time spent at the site of the activity.

(4) Events sponsored by commercial organizations for promotional purposes shall not require admissions and/or entry fees be paid by participating schools or groups. Programs offering package deals which include entry to parks may not be listed.

(5) Festivals conducted on the grounds of theme parks shall provide free admission to the park to the participating students.

(6) Adjudication and recognition provided must not, in any respect, suggest a national championship nor any special status other than achievement in the context

of the activity.

(7) Due to the vast numbers of summer music camps established to improve skills of students for competition, the Committee will not evaluate these programs unless they are an outgrowth of an ongoing school activity and participation requires school nomination or sponsorship.

The National Association of Secondary School Principals believes that the "Guidelines" listed above and the specific activities making up the Advisory List can assist principals in protecting students, teachers, and schools from some undesirable and unwarranted pressures that often are detrimental to the educational process.

5. STUDENT TRAVEL PROCEDURES AND ACTIVITIES

Educators recognize the value and contribution of the field trip as a learning experience. Well planned and executed field trips can enrich learning to an extent not otherwise possible in the classroom. The principal of each school concerned has the responsibility for determining whether or not student groups should participate in educationally-related activities which require travel provisions. The following guidelines are recommended for student activities involving travel:

a. Approval of overnight trips shall follow local district regulations.

b. The dates and time of the project should be considered in relation to the rest of the school program.

c. An appropriately developed plan pertaining to the student activity should be submitted to the principal in writing by the sponsoring member of the teaching staff.

d. The financing of the activity should not take inordinate amounts of student, teacher, or parent time or impose a financial hardship on any student.

e. Students must be under planned supervision at all times and provision should be made for adequate housing and meals.

f. Project or activity arrangements must comply with insurance regulations as stated in Title 14, Section 2904, of the Delaware Code. Copies of written evidence of insurance coverage for out-of-state travel should be on file in the office of the chief school officer or school principal at least 3 days before the scheduled departure of the student group.

g. The school should establish a procedure to secure parental or guardian permission and to provide information on the proposed activity, its purpose, and various organizational details. This information should be forwarded to parents well in advance of the activity.

h. Some provision shall be made for those students who choose not to participate in a planned activity.

i. Each activity should be evaluated as a learning

experience in respect to the stated purpose or objectives of the activity.

j. ~~Participation in strictly commercial projects is prohibited. Performances involving strictly entertainment purposes are not recommended.~~

k. ~~All interscholastic athletic activities in middle level and high schools must be conducted in accordance with the rules and regulations established in the Official Handbook of the Delaware Secondary School Athletic Association and subscribed to by all member schools.~~

7. STUDENT ORGANIZATIONS

~~Student organizations provide individuals with an opportunity to share similar interests and gain recognition in their educational program. When acknowledged as an integral part of instruction, the primary role of student organizations is to promote good teaching and learning. They vitalize and enrich the instructional program by motivating students to learn, by supplementing the course of study, and by extending and recognizing learning experiences beyond the classroom. Student organizations also develop career understanding, civic and social competencies, and provide leadership training.~~

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code
Section 122 (14 Del.C. 122)

REGULATORY IMPLEMENTING ORDER

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Since November 1994, the 49 member Visual and Performing Arts Curriculum Framework Commission has worked to formulate content standards in music, the visual arts, theatre, and dance. To provide automatic connections for teachers, vignettes or teaching examples were included in the document to illustrate how the standards might be delivered in classrooms throughout Delaware. More than half of the Commission members were classroom teachers (including special education) with the rest consisting of school administrators; school board members; higher education faculty; parents; students; and representatives of business, the arts, and the community at large. Multiple drafts were disseminated for review by national content experts, state educators, and the public. The State of Delaware Visual and Performing Arts Content Standards are in alignment with the National Standards for Arts Education and are

mandatory for all visual and performing arts programs of study, K-12. The intent to adopt the State of Delaware Visual and Performing Arts Content Standards was published in the News Journal and the Delaware State News on September 8, 1997, in the form hereto attached as Exhibit A. No comments concerning the adoption of the standards were received.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that the State of Delaware Visual and Performing Arts Content Standards should be approved because visual and performing arts programs are essential components of quality education. Since research indicates that study in the arts has a positive impact on achievement in content areas throughout the curriculum, these standards will provide the foundation that will ensure that all students receive an education in the arts, one of the six content areas identified in the National Educational Goals as "challenging subject matter" in the core curriculum.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reason it is necessary to adopt the regulation. Pursuant to 14 Delaware Code, Section 122 the regulation hereto attached as Exhibit B is hereby adopted. Pursuant to Delaware Code, Section 122(e), the regulation shall be in effect for a period of five years from the effective date of the order as set forth in V. below.

IV. TEXT AND CITATION

The text of this regulation shall hereby be in the form of the attached hereto known as Exhibit B and the regulation shall be cited as State of Delaware Visual and Performing Arts Content Standards.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary and the State Board of Education pursuant to 14 Delaware Code, Section 122 in open session at the said Board's regularly scheduled meeting on November 20, 1997. The effective date of this Order shall be ten days from the date this order is published in the Delaware Registry of Regulations.

IT IS SO ORDERED this 20th day of November, 1997.

Dr. Iris T. Metts, Secretary of Education

Consented to this 20th day of November, 1997.

STATE BOARD OF EDUCATION

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 Dr. Claibourne D. Smith

*** PLEASE NOTE THAT IT IS REQUESTED THAT PERSONS INTERESTED IN OBTAINING THE STANDARDS CONTACT THE DEPARTMENT OF EDUCATION AT 739-4885.**

PUBLIC SERVICE COMMISSION

<p>IN THE MATTER OF THE TERMS AND CONDITIONS UNDER WHICH CUSTOMER- OWNED, COIN-OPERATED TELEPHONES MAY BE UTILIZED WITHIN THE STATE OF DELAWARE</p>	<p>PSC REGULATION DOCKET NO. 12 Track I</p>
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FINDINGS, OPINION & ORDER NO. 4651

AND NOW, to-wit, this 18th day of November, 1997, the Commission finds and orders as follows:

I. BACKGROUND

1. Under the provisions of 47 U.S.C. § 276, as added by the Telecommunications Act of 1996¹ ("the Act"), Congress directed the Federal Communications Commission ("FCC") to promulgate regulations to ensure fair compensation for all payphone service providers ("PSPs") and to ensure competitive parity between independent PSPs and payphone services provided by Bell Operating Companies ("BOCs"). In its orders implementing § 276, the FCC directed a two-phase restructuring and deregulation of payphone services.

2. In the first phase, the FCC directed states to review and remove from their payphone regulations any rules that impose market entry or exit requirements. Additionally, pursuant to the FCC's orders, as of October 7, 1997, rates for local calls from payphones are no longer subject to regulatory oversight and will be set by the competitive marketplace. Thus, as of October 7, 1997, a state may regulate local coin rates only if it demonstrates to the FCC that "market failures" within the State do not allow market-based rates. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("First Report and Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Second

Report and Order").

3. During the second phase, which will end September 20, 1998, the states must develop mechanisms to administer and fund a plan, consistent with the FCC's guidelines, relating to the placement of "public interest" payphones in locations where payphones are needed but might not otherwise exist.

4. By Order No. 4525, dated June 17, 1997, the Commission determined to investigate the repeal or revision of its existing "Rules and Regulations Governing Service By Customer Owned Coin-Operated Telephones" ("COCOT Rules")² and the possible adoption of new rules to govern payphone services within Delaware in light of § 276 and the FCC's implementing orders. Accordingly, the Commission's Order designated a Hearing Examiner to organize, classify and summarize the materials submitted in this matter by interested persons, and to conduct, upon due notice, such public hearings, as might be necessary. In light of the two implementation phases established by the FCC, the Commission determined to pursue this proceeding in two tracks.

5. Track I, in which this Order is entered, considered issues relating to the removal of exit and entry barriers, the implementation of market-based local calling rates, and such regulations as may be needed to protect consumers in a competitive payphone market place. Track II will consider design of a state plan to implement, administer, and fund public interest payphones.

6. The Commission's Order instructed the Hearing Examiner to endeavor to submit his Track I Findings and Recommendations in time to allow for final Commission action by October 7, 1997, the date on which, under the First Report and Order, payphone rates were scheduled to become unregulated. However, the publication, notice and comment periods mandated under 29 Del. C. §§ 10115 and 10118, as amended by 71 Del. Laws 48 (June 4, 1997), did not allow the Hearing Examiner to complete the rulemaking process within the desired time frame.

7. Pursuant to 29 Del. C. §§ 1133 and 10115, on June 12, 1997, the Commission's Secretary filed with the State Registrar of Regulations for publication in the Delaware Register of Regulations a Notice of Investigation and Formulation of Rules Concerning Pay Phone Services, together with a copy of the current COCOT Rules. In addition, the Commission's Secretary mailed a copy of such Notice to the Public Advocate and to all persons who had made timely requests for advance notice of rulemaking proceedings.

8. The Commission's Notice solicited comment on the following issues:

(a) What provisions of the present COCOT Rules constitute entry or exit barriers or are otherwise inconsistent with § 276 or the FCC's Orders?

(b) Should the Commission continue to deem Payphone Service Providers as regulated "Public Utilities"?

(c) What type of mechanism should the Commission adopt to identify "market failures" which might call for continued local call rate regulation?

(d) What type of price and service disclosures should the Commission require for payphones in a competitive payphone market?

9. In response to the Notice, the Diamond State Payphone Coalition ("Coalition") and AT&T Communications of Delaware, Inc. ("AT&T") submitted comments addressing the identified issues.

10. Staff then drafted proposed "Regulations Governing Payphone Services Providers In Delaware" ("Proposed Rules"). In accordance with 29 Del. C. § 10115, the Commission, by Order No. 4572, dated August 26, 1997, instructed its Secretary to transmit to the Registrar of Regulations for publication in the Delaware Register a "Notice of Comment Period and Public Hearing on Proposed Rules Governing Payphone Services," accompanied by a copy of the Proposed Rules. Publication in the Delaware Register took place on August 27, 1997. Further, pursuant to Order No. 4572, the Secretary of the Commission caused notice to be published in *The News Journal* and *Delaware State News* newspapers on September 1, 1997.

11. AT&T and BA-Del submitted Comments on September 9, 1997 concerning the Proposed Rules. Having considered these Comments, Staff filed responsive comments on September 16, 1997, in which it advocated various modifications to the Proposed Rules. Staff subsequently submitted a revised version of the Proposed Rules, setting forth therein its suggested modifications.

12. The Hearing Examiner conducted a duly-noticed public evidentiary hearing in Wilmington on September 24, 1997. Staff, the Coalition, AT&T, and BA-Del attended the hearing. No party presented the testimony of witnesses. At the hearing, Staff stated that it had recently contacted the Architectural Accessibility Review Board ("AARB"), a state agency which protects the interests of disabled Delawareans in matters concerning accessibility, for its views concerning whether the accessibility requirements set out in the COCOT Rules should be reproduced in the new Rules, given the fact that federal regulations implementing the Americans with Disabilities Act also impose standards for access to payphones by the disabled. Staff asked that the record be held open to receive the expected response of the AARB.

13. At the conclusion of the September 24, 1997 hearing, the evidentiary record consisted of 9 exhibits and a 28-page *verbatim* transcript of proceedings. Except for receiving into evidence the comments of the AARB and public comment for the remainder of the public comment period mandated by 29 Del. C. § 10118(a), the Hearing Examiner closed the evidentiary record. The AARB's comments were submitted on October 16, 1997 and received into evidence. The public comment period closed on October 1, 1997, without receipt of comments from members of the

public.

14. At the conclusion of the September 24, 1997 hearing, it appeared that there were only three matters that remained in dispute among the participants. Only BA-Del and Staff filed post-hearing briefs. On October 16, 1997, the Hearing Examiner submitted his Report, containing his Findings and Recommendations (the "Hearing Examiner's Report"), and a text of the Proposed Rules modified to reflect his recommendations. Only BA-Del filed exceptions to the Hearing Examiner's Report. The Commission considered the Hearing Examiner's Report and heard the positions of the parties at its regularly scheduled public session held November 4, 1997 in its offices in Dover, Delaware.

II. ISSUES ON WHICH THE COMMISSION, THROUGH ITS PUBLISHED NOTICE, SOLICITED COMMENTS

A. Do the proposed Rules impose barriers to entry or exit, or are they otherwise inconsistent with § 276 or the FCC's Orders or Regulations?

15. The Issue. The First Report and Order requires states to review their payphone regulations and remove "those regulations that affect competition, such as entry and exit restrictions." First Report and Order at ¶ 50. In addition, as of October 7, 1997, states are required to allow the market, rather than regulation, to set rates for local coin calls. (*Id.* at ¶ 51.) Thus, the Commission should not approve the Proposed Rules unless they meet these standards.

16. Comments of the Participants. All participants agreed that the existing COCOT regulations must be significantly modified or entirely replaced in order to remove barriers to market entry or exit and to achieve consistency with § 276 and the FCC's orders. Thus, all participants considered it fundamental that the regulations apply evenhandedly to all PSPs, *i.e.*, both BA-Del and independent payphone providers ("IPPs"),³ rather than only to COCOT providers, as the existing regulations do. All participants urged that the Commission minimize inspection, certification, and reporting requirements so as not to pose barriers to market entry or exit. All participants agreed that any attempt to impose rate regulation would be inconsistent with the FCC's Order. The Coalition and AT&T each observed that it would be improper to continue to require (as the COCOT Rules do) that payphone providers purchase access lines from BA-Del or to continue to restrict allowable technical arrangements for provisioning payphone service.

17. The Proposed Rules. The Proposed Rules appear to address all the concerns articulated by the participants. The Proposed Rules are intended to entirely replace the Commission's existing COCOT Rules. They would apply equally to all PSPs, not only to COCOT providers. PSPs would no longer be required to obtain a Certificate of Public Convenience and Necessity ("CPCN") for each separate

payphone location, nor would they be required to await the Commission's approval of an application prior to placing payphones in service. Rather, a PSP would need to apply for a CPCN only once, and the application would be deemed approved upon completion of the certification process. Further, the Proposed Rules eliminate the requirement that payphone locations be inspected prior to commencing service. Lastly, the Proposed Rules do not seek to regulate local coin rates.

18. Discussion. Section 276 and the FCC's Orders require the state to review its existing payphone service regulations and remove barriers to entry and exit. The Hearing Examiner concluded that the Proposed Rules, as modified by Staff, do not impose barriers to entry or exit. Moreover, he found that the Rules: (a) apply equally to all PSPs, not only to BA-Del's competitors; (b) streamline the CPCN process to the extent that it should not impede market entry; (c) lift unnecessary technical restrictions; and (d) do not impose even implicit rate regulation.

19. Thus, the Hearing Examiner recommended that the Commission find that the Proposed Rules, as modified by Staff, do not impose restrictions on entry or exit to the payphone market, and are not otherwise inconsistent with § 276 or the FCC's implementing orders or regulations. He, therefore, recommended that the Commission adopt the text of the Proposed Rules.

20. No participant opposed the Hearing Examiner's recommended finding that the Proposed Rules do not impose restrictions on entry or exit and are otherwise consistent with § 276. The Commission is persuaded that the Proposed Rules (with a single revision explained herein) meet the requirements of the Act. Accordingly, the Commission adopts the Regulations Governing Payphone Service Providers in Delaware, attached hereto as Exhibit "A" (the "Rules") and finds that the Rules are free of barriers to entry and exit and are otherwise consistent with § 276 of the Act. (5-0).

B. Should the Commission Continue to Regulate Payphone Service Providers as "Public Utilities"?

21. The Issue. Under 26 Del. C. § 201, the Delaware General Assembly granted the Commission "exclusive original supervision and regulation of all public utilities . . ." Section 102 of the same title defines "public utility" as any entity that operates, among other things, "any . . . telephone . . . service, system, plant or equipment, for public use." Thus, the Commission may exercise regulatory jurisdiction over PSPs if they are deemed "public utilities."

22. Comments of the Participants. AT&T asserted that under 26 Del. C. § 102(2), PSPs would be deemed public utilities and, as such, are subject to regulatory constraints and regulatory oversight by the Commission. However, AT&T noted that the classification of PSPs as regulated public

utilities "could erect unnecessary market entry barriers in contravention of the stated purpose of § 276 of the Act and FCC Implementation Orders."

23. BA-Del's only comment concerning this issue was a suggestion that PSPs and other aggregators who provide payphone service for a fee (*e.g.*, hotels and hospitals) should be treated equally, particularly with respect to assessments.

24. The Coalition stated that the critical question is not whether PSPs should continue to be regulated as public utilities but the level of regulation to be imposed by the Commission. In this regard, the Coalition asserted that under § 276 and the implementing FCC Orders and Regulations, states are permitted to continue to impose regulations which provide competitively neutral consumer protections, primarily in the areas of information and price disclosure to end users. The Coalition, therefore, recommended that the Commission limit its regulation of PSPs to this level, as any higher level of regulation would no longer be appropriate.

25. The Proposed Rules. Under Section 2(a) of the Proposed Rules, any "person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations."

26. Discussion. The Hearing Examiner observed that by the plain language of 26 Del. C. § 102(2), PSPs are, by definition, public utilities. The real issue is, the Hearing Examiner noted, the level of regulation to be imposed on PSPs by the Commission. In this regard, he recommended that the Commission limit its regulation of PSPs to provide competitively neutral consumer protections. The Hearing Examiner found that the Proposed Rules would, if adopted, precisely accomplish this goal.

27. In PSC Dockets Nos. 92-2 and 96-37, the Commission recognized that 26 Del. C. § 201(c) provides it with flexibility in "competitive" situations to determine the extent of regulation to be exercised over a public utility. Moreover, such regulatory flexibility is consistent with the spirit of the Regulatory Flexibility Act⁴ and is within the Commission's discretion, pursuant to authority granted under 26 Del. C. §§ 201 (a) and 201(c). The Hearing Examiner recommended that the Commission exercise such regulatory flexibility here.

28. In sum, the Hearing Examiner proposed and recommended that the Commission adopt Section 2 (a) of the Proposed Rules as written, but also declare, as a matter of policy, that the regulation of PSPs in Delaware will be limited largely to the Commission's providing competitively neutral consumer protection to Delaware payphone users. The Commission finds these recommendations reasonable and appropriate, and hereby accepts them. (5-0)

29. Having concluded that PSPs are public utilities under Delaware law and should be subject to a limited form of regulation, the Commission turns now to the issue surrounding Section 6 of the Proposed Rules which provides that "[e]ach

Payphone Service Provider shall comply with the provisions of 26 Del. C. §115.” Section 115 provides, among other things, that “. . . public utilities subject to the regulation of [the Commission] . . . shall bear the expense of regulation by means of an assessment on such privilege . . .”

30. BA-Del acknowledges that the Commission may not be free to directly excuse PSPs from this requirement” but suggested to the Hearing Examiner that the Commission should exercise the “discretion” to “limit this assessment by way of a refund.”

31. According to BA-Del, since the payphone market is now competitive, it requires less burdensome regulation. Thus, BA-Del asserted “the Commission’s oversight over PSPs . . . will be substantially diminished initially and should be increasingly diminished over time, presumably resulting also in a diminution in the cost of regulation. Those savings should be returned to the industry participants.”

32. The Coalition offered no position with respect to this issue.

33. The Hearing Examiner recommended that the Commission decline BA-Del’s invitation to refund assessments collected from PSPs, on the basis that:

There simply is no legal or factual basis upon which the Commission could (or, for that matter, should) adopt such a proposal. Under 26 Del. C. § 116(c), all funds collected by the Commission, including regulatory assessments, “shall be deposited in the State Treasury to the credit of the Delaware Public Service Commission Regulatory Revolving Fund to be used in the operation of the Commission as authorized by the General Assembly.” To the best of my knowledge, except for the provisions of 26 Del. C. § 116 (f),⁵ no specific authority has been granted the Commission to make refunds to utilities; and I would not recommend that the Commission seek such authority at this time on the basis of this record.

34. As the Hearing Examiner further pointed out, the fact that there is more competition in areas heretofore reserved for regulated monopolies does not necessarily translate into “diminished” oversight and/or lower administrative costs for the Commission. He, therefore, recommended that the Commission not adopt the BA-Del proposal. Though BA-Del noted in its exceptions that it continues to believe that diminished assessments may be appropriate, it did not take exception to the Hearing Examiner’s recommendation. The Commission finds the Hearing Examiner’s recommendations to be well-reasoned and adopts them. (5-0)

C. What Type of Mechanism Should the Commission Adopt to Identify “Market Failures”?

35. The Issue. The First Report and Order imposes market-based pricing for local coin calling except “for states that are able to demonstrate to the [FCC] that there are market failures within the state that would not allow market-based rates.” First Report and Order at ¶ 61. The Commission sought participants’ views on how it should seek to identify the existence of market failures.

36. Comments of the Participants. The Coalition suggested that the Commission need adopt no specific mechanism for monitoring the existence of possible market failures. Instead, the Coalition suggested the Commission need only “monitor” the market and, if deemed necessary, open an investigation to document the relationship of price to cost for presentation to the FCC. AT&T took no position on this issue. Like the Coalition, BA-Del urged that the Commission should adopt no specific mechanism to attempt to identify market failure, but rely instead on consumer complaints and its own investigative powers.

37. The Proposed Rules. Though Staff initially proposed rules requiring each PSP to disclose to the Commission annually each payphone location where the PSP imposes a charge of more than \$0.50 for a local call of less than three minutes’ duration, Staff voluntarily withdrew this proposal in view of BA-Del’s position that such a rule might constitute an implicit price cap which could chill competition. However, Staff asserted that it “reserves the right to seek amendment of this Rule in the future if it is unable otherwise to determine whether market failure exists.”

38. Discussion. In view of the parties’ agreement that, at least at this time, it is unnecessary to impose any mechanism for determining the possible existence of market failure except through the existing consumer complaint process and independent investigation, the Hearing Examiner recommended that the Commission rely on these measures rather than any policing mechanism. The Commission agrees. Should it subsequently appear that the Commission requires enhanced information to identify market failures, it may consider modifying these rules. (5-0)

D. What Type of Price and Service Disclosures Should the Commission Require of PSPs?

39. The Issue. Although the First Report and Order requires states to remove those regulations which impose barriers to entry or exit, the Order emphasizes that “the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosures.” First Report and Order at ¶ 60. Thus, the Commission sought comment on what consumer disclosures it should require PSPs to post on or near payphones.

40. Comments of the Participants. All participants

commented that the disclosures required under the current COCOT regulations are sufficient and should not be significantly modified. In particular, BA-Del took issue with a term of Staff's Proposed Rules which would require PSPs to post "the rate, including any time increment for local calls." BA-Del pointed out that the COCOT Rules do not mandate time increment disclosure, so that this Rule would require it to immediately replace each of its existing notice cards.

41. The Proposed Rules. The Proposed Rules impose disclosure requirements which are somewhat more detailed than those of the current COCOT regulations. For the most part, these additional requirements reflect the changing marketplace for payphone services. Thus, for instance, in addition to the operating instructions, pricing, emergency number, refund, and complaint information required to be posted under the COCOT Rules, the proposed regulations also require PSPs to disclose: the name, address, and toll free number of the payphone service provider or presubscribed operator service provider; any restrictions in making or receiving calls; the payphone's primary intraLATA and interLATA carriers and their toll free numbers; and instructions on how callers may access the toll carriers of their choice.

42. Staff's Proposed Rules also initially contained the time increment disclosure of which BA-Del complains. In its Responsive Comments, however, Staff suggested modifying this requirement, so that it would require disclosure only of any initial time increment, if applicable, and to apply only to local coin calls. This wording, Staff suggested, would require BA-Del to replace payphone notice cards only when it changes its current pricing. BA-Del accepted this proposed modification.

43. Discussion. Despite the participants' shared concern that disclosure requirements not be unduly burdensome, they did not take issue with the disclosures imposed by the Proposed Rules, modified in the manner Staff suggested. The Hearing Examiner found that the Proposed Rules and disclosure provisions are competitively neutral, as required by the First Report and Order, and that they appear no more burdensome than required to reasonably inform consumers of their rights and choices in a competitive environment.

44. Accordingly, he found and concluded that the disclosure requirements in the Proposed Rules are reasonable and appropriate and recommended their adoption. The Commission agrees. (5-0)

IV. OTHER ISSUES

A. Should Location Reporting Information be Considered Proprietary Information Not to be Released by the Commission?

45. The Issue. Section 3 of Staff's Proposed Rules imposed a requirement on PSPs to report to the Commission the location, telephone number, make, model, and

identification number for each payphone. BA-Del contended that such information should be considered proprietary. Staff considered the information ineligible for proprietary treatment as, in Staff's view, it is not appropriately classified as a "trade secret" under the provisions of the state Freedom of Information Act, 29 Del. C. § 10002(d)(2).

46. Discussion. After consideration of the arguments raised by Staff and BA-Del, the Hearing Examiner recommended that the Commission find, on balance, the public interest weighs in favor of non-proprietary treatment of the location information. He thus did not include, in the Proposed Rules, a clause conferring proprietary status on this information.

47. BA-Del took exception to the Hearing Examiner's recommendation and, in its exceptions, suggested the Commission follow a compromise approach under which the information would be designated proprietary but which would also give the Commission and Staff discretion to release specific location information in the public interest. At the Commission's deliberations, Staff voiced its support for this proposal.

48. The Commission is persuaded that the compromise approach now urged by both BA-Del and Staff is reasonable and protects the public interest as well as BA-Del's legitimate business interests. Accordingly, the Commission adopts the following additional text to be added as Section 3(e) of the Rules:

(e) All data provided in response to this section shall be considered proprietary information and shall not be released by the Commission; provided, however, that the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information relating to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters in the public interest.

B. Should the Regulations Impose Standards Concerning Access By the Disabled Different From Those Imposed by Regulations Implementing the Americans With Disabilities Act?

49. The Proposed Rules. Section 4(j) of the Proposed Rules requires payphones to be placed and structured so as to comply with federal and state law and regulations concerning access by the disabled and hearing impaired. In addition, section 4(j) of Staff's Proposed Rules originally incorporated the specific wheelchair accessibility requirements which the Commission adopted on September 13, 1988.⁶

50. Staff asserted that the Commission-adopted standards were developed and supported by the Delaware Architectural

Accessibility Review Board ("AARB"), which protects the interests of disabled Delawareans in matters concerning accessibility. Staff explained at the September 24, 1997 hearing that it had contacted the AARB to seek its views concerning whether the state specific standard should be duplicated in the Proposed Rules, given the intervening promulgation of similar regulations under the Americans with Disabilities Act, 42 U.S.C. § 121-1, et. seq. ("ADA").

51. Discussion. BA-Del urged that the requirements of Section 4(j) be eliminated because the ADA and its implementing regulations, impose standards governing payphone accessibility for the disabled. (BA-Del at 6.) BA-Del, therefore, suggested that the Commission incorporate the ADA standards into the Proposed Rule by reference and decline to adopt any additional state specific standard because such action would be "burdensome and unnecessary." (Id.)

52. On October 16, 1997, Staff Counsel submitted a letter from Gerard I. Landreth, Chief Administrator of the Architectural Accessibility Board, dated October 10, 1997, concerning the need for detailed rules governing payphone accessibility. Mr. Landreth wrote:

The Board advises that present Rule 5 may be replaced with a rule containing language to the effect that: "Outdoor public payphones shall comply with the Americans with Disabilities Act and its regulations so that the payphones are readily accessible to, and usable, by persons with disabilities, including persons who use wheelchairs."

According to Mr. Landreth, the Board felt this language is necessary because, in its opinion, the ADA regulations do not clearly apply to outdoor payphones.

53. The Hearing Examiner concurred with the Board that additional clarity on this point would not be amiss. Thus, the Hearing Examiner recommended the Commission adopt the following text to replace Proposed Rule 4(j):

All payphones, including outdoor payphones, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility.

The Commission agrees. (5-0)

C. Are the Proposed Rules, As Set Forth in Exhibit A, Substantively Changed From the Proposed Rules as Published in the Delaware Register?

54. The Issue. Twenty-nine Del. C. § 10118(c) states:

In the event an agency makes substantive changes in the proposal, as a

result of the public comments, evidence and information, the agency shall consider the revised proposal as a new proposal subject to the notice requirements of §10115 of this title and all other requirements of this subchapter. If the changes are not substantive, the agency shall not be required to re-propose the regulation change. Whether a change constitutes substantive or non-substantive matter shall be determined by the agency head.

Thus, if the text of the Rules adopted herein is "substantively" changed from that published in the Register, the Proposed Rules must be re-published.

55. Comments of the Participants. All of the participants stated at the hearing that, in their view, the modifications under discussion did not substantively change the Proposed Rules from the version published in the Register.

56. Discussion. Though the text of the Proposed Rules recommended herein contains a number of revisions from the initially published version, the Hearing Examiner agreed with the participants that the changes are not substantive. Instead, the Hearing Examiner found they enhance the clarity of the Rules or slightly modify their intended scope. Accordingly, the Hearing Examiner recommended the Commission find that the text of the Rules as shown on Exhibit "A" make no substantive change to the previously published version, and that re-publication is not required. The Commission so finds. (5-0)

NOW THEREFORE, IT IS HEREBY ORDERED:

A. That the Commission adopts the Regulations Governing Payphone Service Providers In Delaware attached hereto as Exhibit "A".

B. The Secretary of the Commission shall forthwith arrange for the publication of the Regulations in their final form, attached hereto as Exhibit "A", in the Register of Regulations.

C. The effective date of this Order shall be ten (10) days from the date of such publication.

D. That the Commission repeals its existing Rules and Regulations Governing Service By Customer-Owned Coin-Operated Telephones, effective ten (10) days from the date of publication.

E. That the Commission reserves the jurisdiction and authority to enter such other and further Orders in these matters as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

¹ Public Law No. 104-104, 110 Stat. 56.

² The Commission initially adopted these rules in this docket by PSC Order No. 2662, dated July 9, 1985.

³ Before enactment of the Telecommunications Act of 1996, IPPs were considered customers of the BOCs who resold payphone service to the public; and payphones owned and operated by IPPs were designated as COCOTs. BOC-owned and operated payphones were not subject to COCOT rules and were considered and regulated as part of the BOC's tariffed services.

⁴ 29 Del. C. Ch. 104

⁵ Twenty-six Del. C. § 116 (f) provides that "[t]he maximum balance which shall remain in the Delaware Public Service Regulatory Revolving Fund at the end of any fiscal year shall not exceed \$500,000 in addition to the annual appropriation for the next fiscal year as authorized by the General Assembly for operation of the Commission. Any amount in excess thereof shall be reverted to each public utility in an amount proportionate to the sum paid by that public utility in the previous calendar year pursuant to subsection (b) of this section."

⁶ See, In the Matter of the Terms and Conditions Under Which Customer-Owned Coin-Operated or Pay Telephones may be Utilized Within the State of Delaware, PSC Regulation Docket No. 12, Order No. 2981, September 13, 1988.

EXHIBIT "A"

REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE

Section 1: Definitions

(a) "Coin-~~implemented~~ **operated** payphone" means a payphone that requires the deposit of coins for calls other than those calls which are:

- (1) billed to another telephone or to a calling card;
- (2) 911 or telephone relay service calls; or
- (3) to toll free numbers, such as 800 or 888 numbers.

(b) "Interexchange carriers" means telephone companies who provide long distance interstate and/or intrastate telephone service.

(c) "Payphone" means any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a credit card. The term

"payphone" includes both instrument-implemented and central-office implemented telephones.

(d) "Payphone service provider" means a person or entity that offers ~~telephone~~ **payphone** service ~~by payphone~~ **[as defined by Section 276 of the Telecommunications Act of 1996, Pub.L. No. 104 - 104, 110 Stat. 56 (1996)]**. The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange carriers, who offer payphones.

~~(e) "Semi-public payphone" means a payphone for which the location provider is charged a recurring monthly rate for payphone service.]~~

Section 2: Certification of Payphone Service Providers

(a) A person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) Except as permitted under paragraph (f) below, no person or entity shall ~~install or offer for service a payphone~~ **offer payphone service** in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity [**"CPCN"**] to provide payphone service. **[One CPCN is required for each provider. Separate CPCN's are not required for each payphone.]**

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

- (1) the business name and address of the applicant;
- (2) the name and address of a contact person or persons;
- (3) the telephone and facsimile numbers and the e-mail address **[,if available,]** of the contact person;
- (4) a description of the manner the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;
- (5) a written statement affirming that the applicant has the required state and local business licenses;
- (6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;
- (7) the applicant's signature and the title of the person signing the application; and
- (8) the date of signature of the application.

(d) A person or entity installing or offering for service a payphone shall comply with the provisions of 47 C.F.R Part 68 and any other order, rule, or regulation of the Federal Communications Commission related to telephone service offered from payphones, unless exempted from compliance by the Federal Communications Commission.

(e) If an applicant correctly completes and submits the application, has complied with the requirements of the Federal Communications Commission, and has paid the required application fee, ~~[the application shall,]~~ upon execution by the Executive Director or the Chief of Technical Services, **[the application]** shall be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(f) Any person or entity providing payphone service on the effective date of these regulations pursuant to a previously-granted Certificate of Public Convenience and Necessity or pursuant to other legal authority may continue to provide such payphone service. Such person or entity shall, within ninety (90) days of the effective date of these regulations, file with the Commission an application under paragraph (c) of this section and the information required by paragraph (a) of Section 3.

(g) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by ~~[paragraph (e) of this section]~~ **[Sections 2(c)(1) through 2(c)(8)]**.

(h) Each certificated payphone service provider shall provide written notice to the Commission ten (10) days prior to the cessation of **[all]** operations **[as a payphone service provider in Delaware]**.

(i) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars (\$100). Such application fee is waived for persons or entities filing applications under paragraph (f) of this section.

Section 3: Location Reporting

(a) At the time of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission in writing the following information for each payphone to be installed and offered in Delaware:

- (1) the make, model, and identification number for the payphone;
- (2) the telephone number for the payphone; and
- (3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(b) If after certification, a payphone service provider ~~[intends to install or offer an additional payphone, relocate an existing payphone, or remove a existing payphone, the payphone service provider shall, prior to such new installation, relocation, or removal, notify the Commission in writing]~~ **[installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall notify the Commission in writing semi-annually, of all such new installations, relocations and removals]**. Such written notification shall state:

(1) ~~[the make, model, and identification number for the additional, relocated, or removed payphone]~~ **[the number of additional, relocated, or removed payphones by location];**

(2) the telephone number for the additional, relocated, or removed payphone; and

(3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(c) The Commission may ~~[also require]~~ **[request]** the information in paragraphs (a) and (b) of this Section to be submitted in electronic format.

(d) A payphone service provider shall not install or offer payphone where the installation or maintenance of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

[e) All data provided in response to this section shall be considered proprietary information and shall not be released by the Commission; provided, however, that the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information relating to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters in the public interest.]

Section 4: Payphone Equipment.

(a) All payphones shall be of a type registered with the Federal Communications Commission pursuant to 47 C.F.R. Part 68, unless such payphone has been exempted under an applicable order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

- (1) dial tone;
- (2) access to 911, any other emergency number, and an operator qualified to route emergency calls;
- (3) access to a number for reporting repairs or service for the payphone; and
- (4) telecommunications relay service.

(c) Providers of payphone service shall provide that each payphone shall:

- (1) be equipped with an audible signaling device and receive incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction;
- (2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and a dial 1 capability and/or 7-digit **[or 10-digit]** dialing;
- (3) permit dialing of subscriber "800" or "888" toll-free numbers without the advance deposit of coins, except

those numbers that have been ~~[permissibly blocked from the payphone]~~ **[blocked in accordance with applicable law or regulations];**

(4) provide, without the advance deposit of coins, access to the caller's desired interexchange carrier or operator service provider by use of an "800," "888," or "950" access toll-free call or by use of a carrier access code; and

(5) permit calls using ~~[credit]~~ **[calling]** cards, collect calls, and calls billed to a third party without the advance deposit of coins and be ~~[programmed so that collect and third party calls cannot be billed to the payphone number, except, at the option of the payphone provider, in the case of semi-public payphones]~~ **[provisioned to prohibit the billing of calling card, collect and third party calls to the payphone number, except, at the option of the payphone service provider];**

(d) Payphones provided for inmates shall not be required to comply with ~~[(c)(1), (c)(2), (c)(3) or (c)(4) of this Section]~~ **[Sections 3(b), 4(b), 4(c) or 4(f), including all subsections thereof].**

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on ~~[or]~~ near the payphone, in plain view of callers:

(1) relevant emergency numbers;

(2) the rate, including ~~[any]~~ **[the initial]** time increment ~~[if any]~~, for a local **[coin]** call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider or presubscribed operator service provider;

(5) a free phone number for maintenance and repairs;

(6) any restrictions in making or receiving calls, and if the payphone does not accept incoming calls, a statement to that effect;

(7) the primary intrastate or intraLATA carrier and the primary interstate or interLATA carrier and toll-free telephone numbers to call for the pre-subscribed carriers' rate information, along with a statement that the rates for operator-assisted calls are available upon request;

(8) any other information necessary to facilitate calls, refunds or repairs;

(9) dialing instructions and the charges, if any, for directory assistance; and

(10) a statement that callers have the right to obtain access to the toll carrier of their choice and may contact their preferred carriers for information on how to access that carrier's service by use of the payphone.

(g) A payphone service provider shall change the posted information required by paragraph (f) of this Section within thirty (30) days of any such change.

(h) All coin-implemented payphones shall be equipped to accept nickels, dimes and quarters and to return coins to

the caller in ~~[the]~~ case ~~[of an incomplete call]~~ **[the call is not answered by the called party].**

(i) All payphones shall be installed and maintained in a manner to assure the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones **[, including outdoor payphones,]** shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility. ~~[Any payphone which is placed in an outdoor location available twenty four hours a day must face a paved area such as a sidewalk of parking lot which is either flush with the surrounding surface or is wheelchair accessible by way of a ramp or reasonably graduated incline. If bumpers or posts are installed to protect the payphone, such posts or bumpers must be fifty (50) inches apart, thirty-six (36) inches in height, and a minimum of six (6) inches and a maximum of nine (9) inches from the front of the payphone enclosure.]~~

Section 5: Local Coin Call Rates

(a) Payphone service providers need not file tariffs ~~[for local coin calling rates]~~. The rate for local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not charge for a local coin call or for directory assistance greater than the rate posted on the payphone. A payphone service provider may not charge for an uncompleted call.

(b) The Commission ~~[may undertake remedial action if it determines that market failures have not allowed for market-based local coin calling rates at specific payphone locations]~~ **[reserves the right to seek to demonstrate to the FCC that there are market failures within the State that would not allow market-based rates].**

Section 6: Reporting.

~~[(a) Each payphone service provider shall file an annual report with the Commission on or before March 31 of each year.~~

~~(b) Each payphone service provider shall provide in its annual report the following information:~~

~~(1) the name of the payphone service provider;~~

~~(2) the address and telephone and facsimile numbers of the payphone service provider;~~

~~(3) the total annual intrastate gross revenues from payphone services for the immediately preceding calendar year;~~

~~(4) the total number of payphones which the provider maintains in service as of the end of its fiscal year; and~~

~~(5) a signed and dated statement sworn to under oath by an authorized representative of the payphone service provider as to the accuracy of the information contained in the annual report.~~

~~(c) A payphone service providers shall be assessed as a public utility under the provisions of 26 Del. C. § 115. A payphone service provider shall submit the regulatory assessment with the payphone service provider's annual report.~~

~~(d) In addition to the annual report, each payphone service provider shall submit to the Commission by March 31 of each year, the following information:~~

~~(1) a description of each location within Delaware, where, during the preceding calendar ear, the local calling rate charged by the payphone service provider exceeded fifty cents for a call of less than three minutes duration; and~~

~~(2) an affirmation by the payphone service provider that each payphone installed and maintained by that provider complies with all of these regulations, including the requirements of paragraphs (b), (c), and (f) of Section 4.] [Each payphone service provider shall comply with the provisions of 26 Del.C. § 115.]~~

Section 7: Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it shall issue an order to a payphone service provider :

(1) revoking, suspending or modifying its Certificate of Public Convenience and Necessity;
(2) imposing fines or penalties, or;
(3) requiring reparation to a customer or affected party; or

(4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not limited to, the following actions by a payphone service provider:

(1) violation of these regulations, including the information disclosure requirements;
(2) conducting business in an unfair or deceptive manner; or
(3) actions which result in revocation of its registration by the Federal Communications Commission.

Section 8: Miscellaneous

These regulations shall become effective **[ten (10) days after publication in the Delaware Register. The effective date shall then be noted on the rules.]**

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council for Children, Youth and Their Families	Mr. Charles E. Wilt	10/30/99
	Mr. Daniel L. Young	10/30/99
	Mr. Duane Brown	10/30/99
	Mr. John Hollis	10/30/99
	Mr. Russell L. Fiske	10/30/99
	Mr. Steven L. Anderson	10/30/99
	Ms. Elizabeth Y. Olsen	10/30/99
	Ms. Eveline C. Armstrong	10/30/99
Advisory Panel on Intergovernmental Planning & Coordination	Mr. Arthur Henry	10/15/00
	Mr. W. Steven Cooper	10/15/00
Architectural Accessibility Board	Ms. Sandra A. Reyes, Esq.	10/15/00
Authority on Radiation Protection	Dr. Frances S. Esposito	10/15/00
	Ms. LaRay A. Fox	10/15/00
	Ms. Sandra J. Moody	10/15/00
Board of Architects	Ms. Devona E. Williams	10/15/00
Board of Cosmetology & Barbering	Ms. Miriam Harris	10/15/00
	Ms. Vera Murrell	10/15/00
	Ms. Myrtle Shockley	10/15/00
Board of Examiners for Nursing Home Administrators	Ms. Ellen Magee	11/10/00
Board of Medical Practice	Dr. Bentley A. Hollander	10/17/00
	Dr. Janet Kramer	10/17/00
	Dr. Venerando J. Maximo	10/17/00
	Ms. Cleo H. Fountain	10/17/00
Board of Professional Counselors of Mental Health	Mr. H. Davis Shockley	10/09/00
	Ms. Mariam M. Cerasari	10/09/00
	Ms. Susan A. Eichler	10/09/00
Cabinet Committee on State Planning Issues	Hon. Iris T. Metts, Ed.D.	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Protection Accountability Commission	Colonel Alan Ellingsworth	Pleasure of the Governor
Child Protection Accountability Commission	Colonel John Cunningham	Pleasure of the Governor
	Dr. Allan DeJong	Pleasure of the Governor
	Mr. Joseph Dell'Olio	Pleasure of the Governor
	Mr. Matthew Denn	Pleasure of the Governor
	Mr. William Murray	Pleasure of the Governor
	Ms. Gloria Fine	Pleasure of the Governor
Children's Trust Fund Board of Directors	Mr. Clinton W. Walker	10/15/00
	Ms. Alice B. Ripsom	10/15/00
	Ms. Rebecca W. Craft	10/15/00
	The Reverend Naomi G. Winchester	10/17/00
Commission on National and Community Service	Mr. Albert Stumpf	10/03/00
	Mr. Richard Kapolka	10/03/00
	Ms. A. Hughlett Kirby	10/03/00
	Ms. Ariadna Castaneda-Clare	10/03/00
	Ms. Audrey Helfman	10/03/00
	Ms. Isabel Rivera	10/03/00
	Ms. Iwana Smith	08/29/00
	Ms. Nancy Landskroener	10/03/00
	Ms. Robin Fisher	10/03/00
	Ms. Sharon Ayres	10/03/00
	The Honorable William Gordon	10/17/00
	Mr. Alfred H. Wassinger	ex-officio
Committee on Disposition of Unmarked Human Burials	Mr. Ronald A. Thomas	10/15/98
Committee on Massage/Bodywork Practitioners	Mr. Allan F. Angel	10/27/00
	Ms. Sheri McGuffey	10/15/00

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Aging and Adults with Disabilities	Mr. David B. Webb	10/30/00
	Mr. George P. Conklin	10/30/00
Council on Hispanic Affairs	Ms. Margaret Lopez-Waite	10/30/00
	Mr. Henry Cruz	10/30/00
Council on Housing and Community Development	Mr. Thomas W. Chambers	10/30/00
Delaware Advisory Council on Career Education	Dr. Thomas Welch	Pleasure of the Governor
	Mr. Daniel Wolfensberger	Pleasure of the Governor
	Ms. Judith Widdowson	Pleasure of the Governor
	Ms. Shirley O'Connor	Pleasure of the Governor
Delaware Bicycle Council	Mr. William B. Davis	10/15/00
	Ms. Jana R. Simpler	12/10/99
Delaware Commission for Women	Ms. Yrene E. Waldron	10/30/00
Delaware Commission on Veterans Affairs	Mr. Alfred A. Antonelli, Sr.	10/30/01
Delaware Greenway and Trails Council	Mr. E. Turner Darden	10/17/00
	Mr. Paul Layton	10/17/00
	Mr. Paul H. Morrill, Jr.	Chairman 10/27/98
	Ms. Gail VanGilder	10/17/00
Delaware State Boundary Commission	Dr. Susanne Fox	Pleasure of the Governor
Delaware Thoroughbred Racing Commission	Ms. Debra L. Berry	03/01/98

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware's Veterans Day 1997 - Retired Officers Association	Mr. Robert Dr. Marcinkowski Chairman	Veterans Day 1997
Delaware Workforce Development Council	Hon. Iris T. Metts, Ed.D. Hon. Stan Taylor	Pleasure of the Governor Pleasure of the Governor
Foster Care Review Board	Ms. Debra L. Waters	10/17/00
Governor's Advisory Council on Exceptional Citizens	Mr. Thomas Brazell Ms. Gwynneth Warren	Pleasure of the Governor Pleasure of the Governor
Historical Records Advisory Board	Dr. James R. Soles Dr. Richmond D. Williams	10/30/00 10/30/00
Motor Vehicle Task Force	Mr. Randy Murrill Mr. William Miller	Pleasure of the Governor Pleasure of the Governor
Pesticide Advisory Committee	Mr. Richard L. Bergold	10/30/00
SBAP Advisory Council	Mr. Delbert Mills	Pleasure of the Governor
Selective Service Board	Mr. Gary Fullman Mr. Patrick H. Rhodes	Nomination to President Nomination to President
State Examining Board of Physical Therapists	Ms. Tara J. Manal	10/15/00
State Human Relations Commission	Mr. Ira W. Hitchens	10/17/01
State Rehabilitation Advisory Council	Ms. Anne Marie E. Aghazadian Ms. Kimberly Pierce	10/15/00 11/10/00

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Sussex County Vocational-Technical School Board of Education	Mr. Richard Ira Lewis Ms. Judy L. Emory	10/03/04 10/03/04

DEPARTMENT OF FINANCE**DIVISION OF REVENUE****TECHNICAL INFORMATION****MEMORANDUM 97-4****October 21, 1997**

SUBJECT: Tax Laws Enacted During the 1997 Regular Session of the Delaware General Assembly.

PERSONAL INCOME TAX

Expansion of Pension Exclusion. Senate Bill No. 219; ch. 131, Vol. 71, Laws of Delaware, expands the \$3,000 "pension" exclusion available to persons age 60 or older to include distributions from all qualified retirement plans as defined in §4974 of the Internal Revenue Code, §401(k) plans, or §457 plans; dividends; interest; and net rental income. This provision is effective for tax year 1997 and thereafter.

BUSINESS AND OCCUPATIONAL GROSS RECEIPTS TAX

Clarification Regarding Exchanges. Senate Bill No. 38; ch. 39, Vol. 71, Laws of Delaware, clarifies the application of the gross receipts tax to exchanges by wholesalers of fungible goods and codifies Delaware's current administrative exemption of goods certified to be delivered in Delaware for immediate transportation out-of-state.

Specifically, it makes clear that the gross receipts tax does not apply to an exchange of fungible goods between or among wholesalers when the goods are received by the wholesaler for the purpose of resale. Sales by an exchange partner direct to a customer of the other party to an exchange remain taxable as heretofore. The exemption is effective for exchanges occurring after December 31, 1996.

Qualification for Economic Development Credits Relaxed. See description of House Bill No. 257 under "MISCELLANEOUS" below.

GIFT TAX

Gift Tax Repealed. House Bill No. 402; ch. 130, Vol. 71, Laws of Delaware, repeals the gift tax effective for gifts made on or after January 1, 1998.

PUBLIC UTILITY TAX

Public Utility Tax Imposed on Use of Natural Gas not Purchased from "Distributor"; Rate of Tax on Natural Gas Equalized with Rate on Electricity. House Bill No. 320, ch. 170, Vol. 71, Laws of Delaware, imposes a tax on the use of natural gas when such gas is not purchased from a "distributor" as defined. The Act also reduces the rate of tax to 2% with regard to natural gas distributed to, or used by, manufacturers and agri-business. The Act is effective for deliveries and distributions made after December 31, 1997.

INHERITANCE TAX

Inheritance Tax Exclusion Raised and Certain Inheritances of Small Business Property Excluded. House Bill No. 403; ch. 129, Vol. 71, Laws of Delaware, increases the threshold for inheritance taxes as follows: Class A (spouses - in most cases not required to pay inheritance taxes) from \$70,000 to \$140,000; Class B (parents, grandparents and lineal descendants of the decedent from \$25,000 to \$100,000; Class C (all other related persons up to 5 degrees of consanguinity) from \$5,000 to \$10,000; and Class D (all other inheritances) from \$1,000 to \$2,000.

This Act also allows in the case of Class A or Class B beneficiaries an inheritance tax deduction for transfers of the value of interests in closely held businesses (those, in general, with 15 or fewer owners).

This Act is effective for decedents dying after December 31, 1997.

TAXES PERTAINING TO TRUSTS

Qualified Settlement Funds Exempt. House Bill No. 143; ch. 189, Vol. 71, Laws of Delaware, exempts from income tax qualified settlement funds as defined in §468B of the Internal Revenue Code.

Real Estate Investment Trusts Exempt. See description of House Bill No. 257 under "MISCELLANEOUS" below.

CORPORATION INCOME TAX

Technical Amendments. See Description of House Bill No. 257 under "MISCELLANEOUS" below.

ALCOHOLIC BEVERAGE TAX

Tax Imposed on Farm Wineries, Microbreweries and Brewery-Pubs. House Bill No. 132; ch. 211, Vol. 71, Laws

of Delaware, imposes the alcoholic beverage tax on farm wineries, microbreweries, and brewery-pubs equal in amount to the tax imposed on importers with regard to the same beverage to the extent the beverage is sold to consumers within Delaware. If sold to an importer, the tax is imposed on the importer. If sold to a distributor for resale in another state, the beverage is not subject to the alcoholic beverage tax. Sales of beverages by a farm winery, microbrewery, or brewery-pub are not subject to the wholesale gross receipts tax.

MISCELLANEOUS

Rounding on Returns. Senate Bill No. 33, ch. 14, Vol. 71, Laws of Delaware, allows the Division of Revenue to require rounding to whole dollars on any line or set of lines on tax returns.

Miscellaneous Technical Amendments. House Bill No. 257, ch. 217, Vol. 71, Laws of Delaware, contains the following provisions: (1) Clarification that real estate investment trusts (REIT's) are exempt from personal income tax; (2) Clarification that foreign dividends, interest income, and royalties are exempt from corporation income tax only to the extent the tax is paid, accrued or deemed paid; (3) Elimination of a requirement for filing tentative corporation income tax returns and paying tentative corporation income tax for short periods; (4) Clarification that taxpayers who receive relief from business license fees on account of investment in new employment and new qualified facilities are not exempt from the payment of the tax levied pursuant to the Hazardous Substance Cleanup Act. (5) Clarification that REIT's and other taxpayers licensable as commercial lessors are subject to the occupation license tax only on rents received on commercial units located in Delaware; (6) Clarification that various kinds of gains and losses for purposes of the corporation income tax allocation provisions are reduced by applicable or related expenses; (7) Conforms estimated tax penalties under the bank franchise tax to similar provisions with regard to the corporation income tax — specifically, the “safe harbor” with regard to 100% of prior year liabilities for banks with \$200,000 or more in liability for any of the three preceding tax years; (8) Eliminates the requirement that, in order to qualify for economic development tax credits, the taxpayer must make qualified investment and employ the requisite number of employees during the same taxable year and instead requires that the two events occur during the same consecutive twelve months; and (9) Changes, from the last day of the taxpayer's taxable year in which the facility is placed in service to a date one year after it is placed in service, the date used to determine the number of employees eligible for consideration in calculating economic development

credits and, in addition, allows an alternative measure based on a date one year after the taxpayer first employs five qualified employees.

Assessment and Collection of Taxes in Case of Bankruptcy. Senate Bill No. 201; ch. 144, Vol. 71, Laws of Delaware ensures that the period of time for collection and assessment of taxes outside bankruptcy will not expire during the period assessment and collection is stayed pursuant to an order of the United States Bankruptcy Court under Title 11 of the United States Code. The Act will allow an additional 60 days after the lifting of the stay to make an assessment and 6 months to commence collection proceedings, which is the same suspension period provided by the Internal Revenue Code, Section 6503(h).

These bills may be accessed on the State's World Wide Web site:

<http://www.state.de.us/research/dor/lis.htm>

\\William M. Remington

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL****REGISTER NOTICE****1. TITLE OF THE REGULATIONS:**

The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Clean Air Act Amendments (CAAA) of 1990 require States with ground-level ozone nonattainment areas classified as severe or above to provide for, in addition to 15-percent reduction in volatile organic compounds (VOC) emissions by 1996, a VOC reduction or an equivalent nitrogen oxide (NO_x) reduction of 3 percent per year averaged over each 3-year period beginning November 1996 until the area's applicable attainment date. These reductions are achieved through the development and implementation of Rate-of-Progress Plans that contain pollution control measures. Kent and New Castle Counties are classified as a severe nonattainment area, with an attainment date of November 2005. Therefore, rate-of-progress plans for Kent and New Castle Counties must be submitted to the USEPA for milestone years 1999, 2002, and 2005. The first of these plans, the 1999 Rate-of-Progress Plan, has been developed and is now being proposed as a revision to Delaware's State Implementation Plan for attaining the ozone standard. The 1999 Rate-of-Progress Plan explains the methods and pollution control strategies that will achieve the required average pollution reduction of three percent per year between 1997 and 1999.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60 Section 6010
Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The Department is holding a Public Hearing on "The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties" on Monday, December 22, 1997 at 6:30 p.m. at Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware. If you have any questions or need any additional information, please contact Mr. Alfred R. Deramo at (302) 739-4791.

Summary of the Proposed Delaware 1999 Rate of progress Plan For Kent and New Castle Counties
as Required by the Clean Air Act Amendments of 1990 for Demonstrating Progress Toward Attainment of the National
Ambient Air Quality Standard for Ozone

The Delaware Department of Natural Resources and Environmental Control
in Conjunction with The Delaware Department of Transportation
November 1997

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*** PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT**

INTRODUCTION

BACKGROUND

This document is a summary of Delaware's 1999 Rate of progress Plan (RPP) which addresses Delaware's nonattainment of the National Ambient Air Quality Standard (NAAQS) for ozone, as required by the Clean Air Act Amendments of 1990 (CAAA).¹ Section 182(d) of the CAAA requires states to submit a plan to the United States Environmental Protection Agency (EPA), for each ozone nonattainment area classified as severe or above, that achieves a 15 percent net reduction by November 15, 1996, of actual anthropogenic Volatile Organic Compound (VOC) emissions. The SIP revision for 1990-1996 reductions is widely known as the "15 Percent Rate of progress Plan (RPP)". Delaware submitted its 15 Percent Rate of progress Plan to the EPA in February 1995. In addition to the 15 percent reduction, Section 182(d) of the CAAA requires states to submit a plan that achieves an actual VOC emission reduction of at least 3 percent per year averaged over each consecutive 3-year period beginning November 15, 1996, until the area's applicable attainment date. The attainment date for the Kent and New Castle County severe ozone nonattainment area is November 15, 2005. A March 2, 1995 memorandum from Ms. Mary D. Nichols, EPA's Regional Administrator, provides for states within the Ozone Transport Region (OTR) with serious and above ozone nonattainment areas a two-phased approach to the post-1996 rate of progress and attainment plan.² Under the first phase, States are required to submit a plan with a set of specific control measures to show at least a 9 percent net reduction of VOC and/or NO_x emissions between 1996 and 1999 to satisfy the rate of progress requirements. In addition, the SIP revision should include modeling results with interim assumptions about ozone transport. The second phase is a 2-year process that assesses regional and local control strategies to show attainment and resolve transport issues of ozone and ozone precursors. The Delaware 1999 Rate of progress Plan satisfies the rate of progress requirements for Phase I.

The NAAQS are air quality standards for pollutants that pose public health risks. Delaware exceeds the standard for only one of these pollutants, ozone. High levels of ozone can harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Ozone is generally not directly emitted to the atmosphere, but is formed in the atmosphere by a chemical reaction between volatile organic compounds (VOC), oxides of

nitrogen (NO_x), and carbon monoxide (CO) in the presence of sunlight. Consequently, in order to reduce ozone concentrations, the CAAA requires specific amounts of reductions in anthropogenic VOC emissions and NO_x emissions over a specified period of years until the ozone standard is met.

The CAAA defines five nonattainment area classifications for areas that exceed the NAAQS, based on the severity of the pollution problem. They are, in order of increasing severity, "marginal", "moderate", "serious", "severe", and "extreme". Attainment dates and plan submission requirements depend on the classification for each area.³ As shown in Figure 1, Kent and New Castle Counties fall within the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), which is classified as a severe nonattainment area for ozone. Kent and New Castle are the two counties for which Delaware is required to develop a Post-1996 RPP. All discussions and data presented in this summary apply only to Kent and New Castle Counties.

The 3 percent per year emissions reduction requirement is based on the 1990 Base Year Ozone SIP Emission Inventory which is an inventory of 1990 actual VOC, NO_x , and CO emissions from sources in Delaware. The amount of VOC emissions reduction that the State must achieve to meet the 3 percent per year emissions reduction requirement is determined from 1990 Base Year emissions levels after accounting for any growth in emissions between the base year (1990) and the milestone year 1999. In effect, the State must plan to implement control measures that will not only reduce 1990 emissions levels at least by an average of 3 percent per year for the 1996-1999 period, but also offset emissions that will be produced as a result of economic growth. The plan must show that expected emissions reductions from federal and State control measures are enough to meet the required 3 percent per year emissions reduction net of growth.

RESPONSIBILITIES

The agency with direct responsibility for preparing and submitting the 1999 Rate of progress Plan is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Program Administrator. The Delaware Department of Transportation (DelDOT) in conjunction with Vanasse Hangen Brustlin, Inc. is responsible for performing the work associated with the on-road mobile source portions of this plan. Various other State agencies, including the Department of Labor, the Department of Public Safety, and the Department of Agriculture provided information for use in developing the plan.

Figure 1. Philadelphia CMSA Nonattainment Area to be inserted here. Please contact DNREC for information

PART I

THE 1990 BASE YEAR INVENTORY SUMMARY AND 1999 TARGET LEVEL OF VOC AND NO_x EMISSIONS

THE 1990 BASE YEAR INVENTORY SUMMARY

The nonattainment plan provisions in the CAAA require states in nonattainment areas to submit to the EPA an initial inventory of actual emissions from all sources of relevant pollutants.⁴ This inventory is to be used as the basis for determining required emissions reductions. Calendar year 1990 is the time frame for this first emissions inventory, which is called the 1990 Base Year Ozone State Implementation Plan (SIP) Emissions Inventory (hereafter referred to as the 1990 Base Year Inventory). Delaware's final 1990 Base Year Inventory was submitted to the EPA as a SIP revision on May 27, 1994, and approved by EPA on March 25, 1996.

The 1990 Base Year Inventory is categorized into point, stationary area, off-road mobile, on-road mobile, and biogenic sources of emissions. Volatile organic compounds (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO) are the ozone precursor emissions reported for each category in the 1990 Base Year Inventory. Because CO is only marginally reactive in producing ozone, the CO component of the 1990 Base Year Inventory does not figure into the rate of progress requirements. Therefore, only the VOC and NO_x components of the 1990 Base Year Inventory are summarized here. The results of Delaware's 1990 Base Year Inventory are summarized in Table 1 for VOC and NO_x emissions from Kent and New Castle Counties. The values in Table 1 are reported in tons per peak ozone season day. The peak ozone season for Delaware is defined as June 1 through August 31.

The percent VOC contribution of each source component listed in Table 1 to the total VOC emissions from Kent and New Castle Counties is shown in Figure 2. These relative proportions are shown both for the total inventory of all sources, and for the anthropogenic inventory which excludes biogenic emissions. In order to produce the 1999 Rate of progress Plan, adjustments must be made to the 1990 Base Year Inventory following EPA guidelines, and the 1999 target level of emissions must be

calculated from that Adjusted Base Year Inventory. The anthropogenic inventory is the inventory from which the Adjusted Base Year Inventory is calculated.

The percent NO_x contribution of each source component listed in Table 1 to the total NO_x emissions from Kent and New Castle Counties is shown in Figure 3. All NO_x emissions in the 1990 Base Year Inventory are from anthropogenic sources. NO_x emissions from biogenic sources are considered to be negligible and are not included in the 1990 Base Year Inventory.

TABLE 1
1990 BASE YEAR INVENTORY SUMMARY OF VOC AND NO_x EMISSIONS
IN TONS PER PEAK OZONE SEASON DAY

SOURCE CATEGORY	KENT COUNTY		NEW CASTLE COUNTY		TOTAL NONATTAINMENT AREA	
Point Sources	3.242	6.130	27.078	85.767	30.320	91.897
Stationary Area Sources	12.967	1.202	34.754	5.398	47.721	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.070	10.620	35.280	27.060	48.350	37.680
Biogenic Sources	32.460	0.000	17.510	0.000	49.970	0.000
Total Emissions	65.233	25.843	131.296	137.002	196.529	162.845

Figure 2. Contribution of Source Components to Total 1990 Base Year VOC Emissions in the Severe Nonattainment Area (Kent and New Castle Counties Only) to be inserted here. Please contact DNREC for information.

Figure 3. Contribution of Source Components to Total 1990 Base Year NO_x Emissions in the Severe Nonattainment Area (Kent and New Castle Counties Only) to be inserted here. Please contact DNREC for information.

THE 1999 TARGET LEVEL OF VOC EMISSIONS WITHOUT NO_x SUBSTITUTION

The 1999 Target Level of VOC emissions is the maximum amount of anthropogenic VOC emissions allowed in 1999 under the rate of progress requirement. However, Section 182(c)(2)(C) of the CAAA allows states to substitute actual NO_x emissions reductions occurring after 1990 to meet the post-1996 VOC emissions reduction requirements. Such a substitution is permitted provided the emissions reduction meets the criteria outlined in the EPA's December 15, 1993, *NO_x Substitution Guidance*⁵. The condition for meeting the rate of progress requirement is that the sum of all creditable VOC and NO_x emissions reductions must be equal to 3 percent per year averaged over the applicable 3-year period.

In addition, the overall VOC and NO_x emissions reductions must be consistent with the area's modeled attainment demonstration. However, the EPA issued policy memorandum *Clarification of Policy for Nitrogen Oxides (NO_x) Substitution*⁶, dated July 12, 1994, modifies the consistency requirement. The new policy requires that the State must have adopted NO_x RACT regulations and completed at least one Urban Airshed Modeling (UAM) or Regional Oxidant Modeling (ROM) analysis supporting the use of NO_x controls to reduce ozone in the area under consideration. The State of Delaware has satisfied these two requirements. The Department adopted NO_x RACT regulations on November 24, 1993, and these regulations went into effect from May 31, 1995. A preliminary analysis of UAM for the Philadelphia-New Jersey UAM Airshed has demonstrated that as much as 75% of VOC and 75% of NO_x controls could be necessary to achieve the ozone NAAQS standard. Therefore, NO_x control is critical for Delaware's severe nonattainment area to reach attainment of the ozone standard.

This section presents the method of calculating the target level of VOC emissions for the milestone year 1999 without NO_x substitution as outlined in the *Guidance on the Post-1996 Rate of progress Plan and the Attainment Demonstration, Ozone/Carbon Monoxide Programs Branch, U.S. Environmental Protection Agency, Office of Planning and Standards, Research Triangle Park, NC 27711, February 18, 1994* (hereafter referred to as the *Guidance on the Post-1996 Rate of progress Plan*). Then the 1999 VOC target levels will be compared to the expected level of VOC emissions for the milestone year 1999 which is the result of applying all expected national, regional and State control measures. If this comparison demonstrates that the expected VOC emissions level for the milestone year 1999 does not meet the target level, then the NO_x substitution will be made.

The target level of VOC emissions for the 1999 milestone year represents the maximum amount of anthropogenic VOC

emissions that the nonattainment area can emit in 1999 while complying with the post-1996 rate of progress requirements. The *Guidance on the Post-1996 Rate of progress Plan* gives the target level of any milestone year x as:

$$TL_x = TL_y - BG_r - FT_x$$

where:

- x = current milestone year
- y = previous milestone year
- TL_x = target level of emissions for year x
- TL_y = target level of emissions for year y
- BG_r = Emission reduction requirement for year x
- FT_x = Fleet turnover correction term for year x

That is, the target level of emissions for the milestone year x is calculated by subtracting the 3 percent per year rate of progress emission reduction requirement and the fleet turnover correction from the previous milestone's target level. There are six major steps involved in calculating the 1999 target level of VOC emissions. The first four steps are needed to calculate the 3 percent per year rate of progress emissions reductions.

Step 1 - Development of the 1990 Base Year Inventory

The 1990 base year inventory serves as the starting point for all other inventories. A breakout by source category of the 1990 base year inventory of VOC and NO_x emissions is presented in Table 1.

Step 2 - Development of the 1990 Rate of progress or Baseline Inventory

This inventory forms the "baseline" from which to calculate the 9 percent emissions reduction for the 1996-1999 period. The 1990 baseline inventory accounts for all anthropogenic emissions in the Delaware's severe nonattainment area. Therefore, this emissions inventory is calculated by removing biogenic emissions and any emissions from the sources located outside of the nonattainment area from the base year inventory. In addition, perchloroethylene (PERC) emissions are subtracted from the 1990 Base Year Inventory. PERC emissions were originally classified by the EPA as a photochemically reactive VOC for emission inventory purposes. The EPA reclassified PERC as photochemically *non-reactive* after the 1990 Base Year Inventory was compiled. Because only the photochemically *reactive* VOCs participate in the formation of ozone, the PERC emissions, are subtracted from the 1990 Base Year Inventory prior to the target level calculations. A breakout by source category of the 1990 baseline inventory of VOC emissions is presented in Table 2.

Step 3 - Development of the 1990 Adjusted Base Year Inventory

Section 182(b)(1)(D) requires the removal of emissions reductions that will occur by the milestone year due to the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to 1990. Therefore, the 1990 baseline inventory is adjusted by subtracting the VOC emissions reductions that are expected to occur between 1990 and the target milestone year as a result of the FMVCP and RVP regulations. The result of this step is called the 1990 Adjusted Base Year Inventory.

The FMVCP and RVP VOC emissions reductions that are expected to occur between 1990 and milestone year 1999 are determined using the on-road mobile source emission modeling software, MOBILE5a, provided by the EPA. The MOBILE5a input and output files for the 1990 Adjusted Base Year Inventory for the target year 1999 are provided by the Delaware Department of Transportation (DelDOT) through their contractor Vanasse Hangen Brustlin, Inc. (VHB). The VOC emissions reductions that will occur between 1990 and the milestone year 1999 as a result of the FMVCP and RVP regulations are determined by subtracting the 1990 Adjusted Base Year Inventory of on-road mobile source emissions relative to each milestone from the 1990 Baseline Inventory of on-road mobile source emissions. This operation is shown in Table 3.

GENERAL NOTICES

TABLE 2
1990 BASELINE INVENTORY SUMMARY OF VOC AND NO_x EMISSIONS
IN TONS PER PEAK OZONE SEASON DAY

SOURCE CATEGORY	KENT COUNTY		NEW CASTLE COUNTY		TOTAL NONATTAINMENT AREA	
	VOC	NO _x	VOC	NO _x	VOC	NO _x
Point Sources	3.242	6.130	26.938	85.767	30.180	91.897
Stationary Area Sources	12.779	1.202	34.366	5.398	47.145	6.600
Off-Road Mobile Sources	3.494	7.891	16.674	18.777	20.168	26.668
On-Road Mobile Sources	13.070	10.620	35.280	27.060	48.350	37.680
Total Emissions	32.585	25.843	113.258	137.002	145.843	162.845

TABLE 3
NON-CREDITABLE FMVCP/RVP VOC AND NO_x EMISSIONS REDUCTIONS
IN TONS PER PEAK OZONE SEASON DAY

1990 Base Year On-Road Mobile Source Emissions	48.350	37.680	(a)
1990 Adjusted Base Year On-Road Mobile Inventory Relative to 1996	38.760	34.700	(b)
1990 Adjusted Base Year On-Road Mobile Inventory Relative to 1999	36.850	33.730	(c)
FMVCP/RVP Emissions Reductions for 1990-1999	11.500	3.950	(d)=(a)-(c)
Fleet Turnover Correction for 1996-99	1.910	0.970	(e)=(b)-(c)

1990 Adjusted Base Year Inventory Calculation

The total 1990 Adjusted Base Year Inventory relative to a milestone year is obtained by subtracting the non-creditable FMVCP/RVP emissions reductions from the 1990 Baseline Inventory. This operation is shown in Table 4.

Step 4 - Calculation of Required 3 Percent per Year VOC Reductions

The required average 3 percent per year VOC emissions reduction for the 1996-1999 period is determined by multiplying the 1990 Adjusted Base Year Inventory determined in step 3 by 9 percent (0.09). The reductions are:

$$\begin{aligned} \text{Required 9 Percent VOC Reductions for 1996-99 period} &= 134.343 \times 0.09 \\ &= 12.091 \text{ tons VOC/day} \end{aligned}$$

TABLE 4
ADJUSTED 1990 VOC AND NO_x EMISSIONS INVENTORY RELATIVE TO
MILESTONE YEAR 1999 IN TONS PER PEAK OZONE SEASON DAY

1990 Baseline Inventory from Step 2	145.843	162.845	(f)
FMVCP/RVP Emissions Reductions between 1990 and Post-1996 Milestone Year	11.500	3.950	(g)
1990 Adjusted Base Year Inventory Relative to Milestone Year 1999	134.343	158.895	(h)=(f)-(g)

Step 5 - Calculation of Fleet Turnover Correction Term

In the absence of any new requirements of the CAAA, there would still be some decrease in motor vehicle emission factors for many years as a result of fleet turnover, the gradual replacement of older pre-control vehicles with newer vehicles with controls. The CAAA does not allow States to take credit for these reductions for rate of progress purposes. The emissions reductions due to any fleet turnover during the consecutive milestone years are not creditable, and therefore, need to be accounted in figuring the target level of emissions for a milestone year. Hence, the 1999 target level of VOC emissions is estimated from the 1996 VOC target level, which does not account for fleet turnover correction for the 1996-1999 period. Therefore, the 1999 target level is obtained by subtracting the 9 percent reduction and the fleet turnover correction from the previous target level. The fleet turnover correction for the 1999 target level is obtained by subtracting the adjusted mobile source emissions of 1999 from the adjusted mobile source emissions of 1996. This operation is shown in Table 3.

Step 6 - Calculation of the 1999 Target Level of VOC Emissions

The 1999 target level of VOC emissions is determined by subtracting the 9 percent emissions reductions calculated in step 4 and the fleet turnover correction term in step 5 from the 1996 VOC target level. This operation is indicated in Table 5.

TABLE 5
1999 TARGET LEVEL OF VOC EMISSIONS WITHOUT NO_x SUBSTITUTION
IN TONS PER PEAK OZONE SEASON DAY

DESCRIPTION	VOC	
Target Level for 15% Plan	115.815	(i)
9% Required Reductions	12.091	(j)
Fleet Turnover Correction	1.910	(k)
VOC Target Level for Milestone Year 1999	101.814	(l)=(i)-(j)-(k)

Comparison of the 1999 VOC Target Level with the Expected 1999 VOC Level

In order to meet the 3 percent per year rate of progress requirement, Delaware's 1999 anthropogenic VOC emissions in Kent and New Castle Counties must not exceed the target levels indicated in Table 5. The expected VOC emissions for the milestone year 1999 with all possible known national, regional and local control measures are estimated and listed Table 14. These are the maximum achievable emissions considering all feasible VOC control measures contained in the 15% plan and any new national, regional and local VOC control measures that will be implemented after 1996. When the 1999 expected VOC emissions level of 110.185 tons VOC/day is compared to the 1999 target level of 101.814 tons VOC/day, it is observed that Kent and New Castle Counties do not meet the 1999 target level. Therefore, it has become clear that NO_x substitution is necessary to meet the 1999 rate of progress requirement.

THE 1999 TARGET LEVEL OF VOC EMISSIONS WITH NO_x SUBSTITUTION

Section 182(c)(2)(C) of the CAAA states that the actual NO_x emissions reductions occurring after 1990 can be used to meet the post-1996 emissions reduction requirement, provided that such reductions meet the criteria outlined in the EPA's December 15, 1993 *NO_x Substitution Guidance*. The conditions set forth in the *NO_x Substitution Guidance* are:

- the sum of all creditable VOC and NO_x emission reductions must equal 3 percent per year averaged over each applicable milestone period,
- the overall VOC and NO_x emission reductions must be consistent with the area's modeled attainment demonstration.

The second condition, i.e. the consistency requirement, is modified by the EPA issued policy memorandum *Clarification of Policy for Nitrogen Oxides (NO_x) Substitution*, dated July 12, 1994. The new policy requires that the State must have adopted NO_x RACT regulations and demonstrate, through modeling of at least one episode with photochemical modeling or ROM analysis, the usefulness of NO_x controls in reducing the ozone concentrations. The State of Delaware satisfies these two requirements. The Department has adopted NO_x RACT regulations on November 24, 1993 and these regulations went into effect

from May 31, 1995. The UAM sensitivity analysis for the Philadelphia-New Jersey UAM Airshed has demonstrated that as much as 75 percent of VOC and 75 percent of NO_x controls could be necessary to achieve the ozone standard in that domain. Therefore, Delaware meets the consistency requirement for NO_x substitution.

Calculation of the 1999 VOC and NO_x Target Levels

The 1999 VOC and NO_x target levels of emissions represent the maximum amounts of VOC and NO_x emissions permitted for the milestone year 1999 satisfying the 3 percent per year rate of progress requirement. The steps required for determining the target levels are similar to those required without NO_x substitution. The 1999 milestone NO_x target level, however, is calculated differently since there is not a 1996 NO_x target that can be used to calculate the 1999 target. There are six major steps in calculating the 1999 VOC and NO_x target levels of emissions:

Step 1- Development of the 1990 Base Year Inventory

The 1990 base inventory serves as the starting point for all other inventories. A breakout by source category of the 1990 base year inventory of VOC and NO_x emissions is presented in Table 1.

Step 2 - Development of the 1990 Rate of progress or Baseline Inventory

This inventory forms the "baseline" from which to calculate the 9 percent emissions reduction for the 1996-1999 period, and accounts for all anthropogenic emissions in Delaware's severe nonattainment area. It is calculated by removing biogenic emissions and any emissions from the sources located outside of the nonattainment area from the base year inventory. A breakout by source category of the 1990 baseline inventory of VOC and NO_x emissions is presented in Table 2.

Step 3 - Development of the 1990 Adjusted Base Year Inventory

Section 182(b)(1)(D) requires the removal of emissions reductions that will occur by the milestone year due to FMVCP and RVP regulations promulgated prior to 1990. Therefore, the 1990 baseline inventory excludes VOC and NO_x emissions that would be eliminated by FMVCP and RVP regulations prior to the enactment of CAAA. The result of this step is the 1990 Adjusted Base Year Inventory.

The FMVCP and RVP NO_x emissions reductions that are expected to occur between 1990 and 1999 are determined using the on-road mobile source emissions modeling software, MOBILE5a, provided by the EPA. The MOBILE5a input and output files for the 1990 Adjusted Base Year Inventory were provided by the Delaware Department of Transportation (DelDOT) through their contractor Vanasse Hangen Brustlin, Inc. (VHB). The NO_x emissions reductions that will occur between 1990 and 1999 as a result of the FMVCP and RVP regulations are determined by subtracting the 1990 Adjusted Base Year Inventory of On-Road Mobile Source Emissions from the 1990 Baseline Inventory of On-Road Mobile Source Emissions. The results are presented in Table 4.

Step 4 - Calculation of Required Creditable Reductions

The percent reduction required for VOC and NO_x emissions is calculated separately. The sum of all creditable VOC and NO_x emissions reductions must equal the average 3 percent per year required reductions. The VOC emissions reduction that can be applied for the rate of progress of milestone year 1999 is obtained by subtracting the sum of non-creditable fleet turnover correction term and the expected VOC emissions level in the milestone year from the previous milestone year target level of VOC emissions. The results are summarized in Table 6.

The percent of VOC reduction creditable toward the 3 percent per year rate of progress is determined from the 1990 Adjusted Base Year Inventory of VOC Emissions. The creditable VOC emissions reduction obtained for milestone year 1999 (Table 6) is converted to equivalent percentages, and is found to be 2.770%. The percent NO_x reduction that can be substituted to meet the average 3 percent per year rate of progress is obtained from the fact that the sum of all creditable VOC and NO_x emissions reduction must equal 9 percent between successive milestone years. The percent of VOC and NO_x emissions reductions required to meet the 3 percent per year rate of progress requirement are indicated in Table 7.

TABLE 6
VOC EMISSIONS REDUCTIONS CREDITABLE FOR THE 3 PERCENT PER YEAR RATE OF PROGRESS REQUIREMENT IN TONS PER PEAK OZONE SEASON DAY

DESCRIPTION	VOC	
VOC Target Level for Previous Milestone	115.815	(m)
VOC Fleet Turnover for Applicable Period	1.910	(n)
VOC Control Strategy Projections of Milestone Year 1999	110.185	(o)
VOC reduction creditable for 3% per year rate of progress	3.720	(p)=(m)-(n)-(o)

TABLE 7
PERCENT OF VOC AND NO_x EMISSION REDUCTIONS NEEDED FOR THE 3-PERCENT PER YEAR RATE OF PROGRESS REQUIREMENT

MILESTONE YEAR	VOC REDUCTION (%)	NO _x REDUCTION (%)	TOTAL (%)
1999	2.770	6.230	9

The amount of NO_x emissions reduction in tons per day that can be substituted for VOC reductions is obtained by multiplying the percent NO_x emissions reductions obtained in Table 7 with the appropriate 1990 Adjusted Base Year Inventory of NO_x emissions. The VOC and NO_x emissions reductions in tons per day required to meet the average 3 percent per year rate of progress are summarized in Table 8.

TABLE 8
VOC AND NO_x EMISSION REDUCTIONS NEEDED FOR THE 3-PERCENT PER YEAR RATE OF PROGRESS REQUIREMENT IN TONS PER PEAK OZONE SEASON DAY

MILESTONE YEAR	VOC REDUCTION	NO _x REDUCTION
1999	3.720	9.900

Step 5 - Calculation of Fleet Turnover Correction Term

The fleet turnover correction is the difference between the FMVCP/RVP emissions reductions calculated in step 3 and the previous milestone year's FMVCP/RVP emissions reductions. However for the milestone year 1999, this term is not calculated for NO_x emissions. Unlike the VOC target level, the NO_x target level is determined differently because there is no 1996 NO_x target level. The 1999 NO_x target level is calculated by adjusting the 1990 baseline as described in Step 6. Therefore, the estimation of fleet turnover correction for 1999 NO_x target level is not required. The non-creditable fleet turnover corrections for the milestone year 1999 are indicated in Table 3.

Step 6 - Calculation of the 1999 Target Level of VOC and NO_x Emissions

The 1999 VOC and NO_x target levels are calculated by subtracting the required emissions reductions calculated in step 4 and the fleet turnover correction term estimated in step 5 from the previous target level. As mentioned above, the 1999 NO_x target is calculated by subtracting the emissions reductions calculated in step 4 and the non-creditable FMVCP/RVP emissions reductions calculated in step 3 from the 1990 baseline. The 1999 target level of VOC and NO_x emissions are summarized in Table 9.

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TABLE 9
THE 1999 TARGET LEVEL OF VOC AND NO_x EMISSIONS
IN TONS PER PEAK OZONE SEASON DAY

1996 VOC Target Level/1990 NO _x Baseline	115.815	162.845
VOC/NO _x Fleet turnover	1.910	N/A
NO _x FMVCP/RVP during 1990-1999	N/A	3.950
Emission Reduction Requirement	3.720	9.900
1999 Target Levels	110.185	148.995

In order to meet the average 3 percent per year rate of progress requirement for the milestone year 1999, the anthropogenic VOC and NO_x emissions in Kent and New Castle Counties must not exceed the target levels shown in Table 9.

PART II THE 1999 GROWTH FACTORS AND THE 1999 CURRENT CONTROL PROJECTION INVENTORY

THE 1999 CURRENT CONTROL PROJECTION INVENTORY

In order to determine the total amount of VOC and NO_x emissions reductions for the 1996-1999 period, the emissions levels for the milestone year 1999 must be estimated. For this purpose, the 1999 growth factors are developed for various source categories of emissions based on economic indicators. The 1990 baseline emissions are multiplied by these growth factors, and the resulting inventory is called the 1999 Current Control Projection Inventory. The 1999 Current Control Projection Inventory is an estimation of the amount of VOC/NO_x emissions that will occur in 1999, if no new emission control measures are implemented between 1990 and 1999. The difference between the 1999 Current Control Projection Inventory and the 1999 Target Level of Emissions is the total amount of emissions that the State must plan to reduce in order to meet the 3 percent per year VOC reduction requirement for the 1999 target year. This section contains a discussion of how the total VOC and NO_x emissions reduction requirement is determined.

The 1999 Current Control Projection Inventory of VOC and NO_x emissions for the Kent and New Castle Counties is summarized in Table 10. The VOC and NO_x emissions projections by county are summarized in Tables 11 and 12, respectively. Also included for comparison purposes in these tables are the 1990 Baseline and 1996 Current Control Projection emissions for each category. The 1999 Current Control Projection and Baseline VOC and NO_x data are shown graphically in Figures 4 and 5, respectively. Figures 6 and 7 show the relative proportions of VOC and NO_x emissions for each source category in the 1999 Current Control Projection Inventory for the entire severe nonattainment area.

TABLE 10
SUMMARY OF 1999 CURRENT CONTROL PROJECTION INVENTORY OF VOC
AND NO_x EMISSIONS FOR THE KENT AND NEW CASTLE COUNTY NONATTAINMENT AREA IN TONS PER
PEAK OZONE SEASON DAY

CATEGORY	VOC EMISSIONS PROJECTIONS			NO _x EMISSIONS PROJECTIONS		
	1990	1996	1999	1990	1996	1999
Point Sources	30.180	29.826	30.461	91.897	101.726	103.231
Stationary Area Sources	47.145	48.516	49.955	6.600	6.966	7.204
Off-Road Mobile Source	20.168	20.984	21.622	26.668	27.727	28.474
On-Road Mobile Source	48.350	54.720	57.700	37.680	42.800	45.150
Total Emissions	145.843	154.046	159.738	162.845	179.219	184.059

TABLE 11
SUMMARY OF 1999 CURRENT CONTROL PROJECTION INVENTORY VOC EMISSIONS BY COUNTY IN TONS PER PEAK OZONE SEASON DAY

CATEGORY	KENT COUNTY			NEW CASTLE COUNTY		
	1990	1996	1999	1990	1996	1999
Point Sources	3.242	3.179	3.267	26.938	26.647	27.194
Stationary Area Sources	12.779	13.099	13.473	34.366	35.417	36.482
Off-Road Mobile Sources	3.494	3.788	3.923	16.674	17.196	17.699
On-Road Mobile Sources	13.070	14.660	15.460	35.280	40.060	42.240
Total Emissions	32.585	34.726	36.123	113.258	119.320	123.615

TABLE 12
SUMMARY OF 1999 CURRENT CONTROL PROJECTION INVENTORY NO_x EMISSIONS BY COUNTY IN TONS PER PEAK OZONE SEASON DAY

CATEGORY	KENT COUNTY			NEW CASTLE COUNTY		
	1990	1996	1999	1990	1996	1999
Point Sources	6.130	6.269	6.538	85.767	95.457	96.693
Stationary Area Sources	1.202	1.269	1.311	5.398	5.697	5.893
Off-Road Mobile Sources	7.891	8.298	8.555	18.777	19.429	19.919
On-Road Mobile Sources	10.620	11.920	12.570	27.060	30.880	32.580
Total Emissions	25.843	27.756	28.974	137.002	151.463	155.085

The point, stationary area, and off-road mobile source portions of the 1999 Current Control Projection Inventory are essentially created by multiplying 1990 Baseline Inventory emissions values by the appropriate growth factors. The on-road mobile source emissions are projected by multiplying emission factors generated using the MOBILE5a software by the projected vehicle miles traveled (VMT) for each of the 1999 milestone years. The remainder of this section is broken down into discussions of the development of growth factors; the methods used to project emissions from the point, stationary area, off-road mobile, and on-road mobile source categories; and the calculation of the required VOC and NO_x reductions.

Figure 4. Comparison of 1996 and 1999 Current Control Projection VOC Inventories with the 1990 Baseline VOC Emissions Inventory for the Kent and New Castle County Nonattainment Area to be inserted here. Please contact DNREC for information.

Figure 5. Comparison of 1996 and 1999 Current Control Projection NO_x Inventories with the 1990 Baseline NO_x Emissions Inventory for the Kent and New Castle County Nonattainment Area to be inserted here. Please contact DNREC for information.

Figure 6. Current Control Projection Inventory of VOC Emissions for the Kent and New Castle County Nonattainment Area by Source Category and County to be inserted here. Please contact DNREC for information.

Figure 7. Current Control Projection Inventory of NO_x Emissions for the Kent and New Castle County Nonattainment Area by Source Category and County to be inserted here. Please contact DNREC for information.

GROWTH FACTORS

The first step in calculating the 1999 Current Control Projection Inventory is to develop growth factors for all source categories of VOC emissions except on-road mobile sources. Growth factors are ratios which compare the amount of emission-producing activity expected in the projection year to that which occurred in the base year (1990). Thus, growth factors quantify the proportional increase or decrease that economic growth or decline is expected to have on emission levels from 1990 to the projection year. Because growth in emissions for all source categories cannot be directly determined, growth factors are derived using surrogate measures of growth which are indirect, quantifiable measures of activities that are expected to grow in a manner similar to emissions from the various source categories. For example, growth in gasoline tank truck loading and unloading is related to growth in vehicle miles traveled (VMT), since demand for gasoline determines the need for gasoline transport. Similarly, population growth serves as a good indicator of expected increases in emissions from residential fuel use.

Sources of data used to derive Delaware's growth factors include population statistics from *Population Projections, Version 1992.0*, Delaware Population Consortium, Dover, DE, January 1992; earnings and employment data by industry type from *BEA Regional Projections to 2040, Volumes I, II, and III*, U.S. Department of Commerce, Bureau of Economic Analysis (BEA), Washington, D.C., U.S. Government Printing Office, October 1990; and local surveys conducted by the Air Quality Management Section of the Delaware Department of Natural Resources and Environmental Control (DNREC). The growth factors were derived according to *Procedures for Preparing Emissions Projections*, EPA-450/4-91-019, July 1991, (hereafter referred to as *Procedures/Projections*), and the *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans*, EPA-452/R-93-002, March 1993, (hereafter referred to as the *Guidance for Growth/Projections/Strategies*), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC.

For point sources, growth factors are developed for facility level Standard Industrial Classification (SIC) code categories. SIC codes are a series of number codes devised by the federal Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged. Point source emissions are grouped by two or four digit SIC code for purposes of applying growth factors. Growth factors for projecting electric utility NO_x emissions are developed differently because the document *Procedures/Projections* prescribes a different methodology for projecting NO_x emissions from electric utilities. This methodology yields projection year unit-level annual NO_x emissions by fuel type. The ratio of the projection year and base year annual NO_x emissions gives the projection year unit-level growth factor by fuel type. For stationary area and off-road mobile sources, growth factors are developed for source classification code (SCC) categories. Source classification codes are a series of number codes developed by EPA to define specific types of VOC or NO_x emitting activities. Area source emissions are generally grouped by four digit SCC code for purposes of applying growth factors. The growth factors are used to develop the point, stationary area and off-road mobile source portions of the 1999 Current Control Projection Inventory. Growth factors are not applicable to the on-road mobile source category because on-road mobile source projections are determined through modeling.

THE 1999 CURRENT CONTROL PROJECTION METHODOLOGY

PROJECTION METHODOLOGY FOR POINT SOURCES

Point sources are projected according to the *Guidance for Growth/Projections/Strategies*. Although point source growth factors are developed based on broad SIC groupings, the projections for the point sources are accomplished on a process-by-process basis because point source VOC controls are generally applied at the process level. Point source emissions are projected using either 1990 actual emissions rates or 1990 allowable emissions rates depending on whether or not a source will be subject to new VOC controls by the projection year. Per a memo from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, dated April 13, 1993, emissions projections for point sources must be evaluated at allowable emissions rates rather than 1990 actual emission rates for sources that will have new controls by the projection year. The memo also states that projections for sources whose 1990 regulatory limit will not be changed in the projection year can be based on 1990 actual emissions. Therefore, point source emissions are projected using the following two methods:

.. Method 1

Emissions for point sources that will have new controls by the post-1996 milestone year are determined at allowable emissions rates. Allowable emissions are determined from *enforceable* (1990 regulatory or permit) emissions rates, *anticipated* operating rates, and *anticipated* operating schedules. The 1999 Current Control Projection Inventory emissions for point sources are determined by inserting the 1990 regulatory or permit conditions and 1990 operating data into the projection equations from

Section 6.4 of the *Guidance for Growth/Projections/Strategies*. These projection equations use controlled emissions factors or process control efficiencies, process operating parameters, growth factors, and rule effectiveness factors to project emissions to the target year.

More specifically, for purposes of the 1999 Current Control Projection Inventory:

- Controlled Emissions Factors or Process Control Efficiencies are 1990 regulatory or permit limits expressed in mass of emissions per unit time or weight percent emissions reduction for each affected process in the 1990 Baseline Inventory.
- Process Operating Parameters are 1990 process throughput values, operating schedules, or emissions rates for each affected process in the 1990 Baseline Inventory.
- Growth Factors for point sources are developed for facility level Standard Industrial Classification Codes as previously discussed. Growth Factors for electric utility NO_x emissions are developed for facility-level SCC type.
- Rule effectiveness is an adjustment to the emissions estimates of regulated sources to account for the fact that all sources are not in compliance with applicable air regulations 100 percent of the time. The rule effectiveness adjustment compensates for underestimates of emissions caused by noncompliance with existing regulations, control equipment downtime, operating problems, and process upsets.
- Because the same projection equations are used to determine both the 1999 Current Control Projection Inventory and the 1999 Control Strategy Projection Inventory (discussed in Part III of this plan), sample calculations using the projection equations are presented in Part III of this plan.

“ Method 2

Point source processes that will not have new controls by 1999 are projected by multiplying the appropriate growth factor for that process by the 1990 actual baseline emissions for that process.

PROJECTION METHODOLOGY FOR STATIONARY AREA AND OFF-ROAD MOBILE SOURCES

The 1999 Current Control Projection Inventory for stationary area and off-road mobile sources is determined by multiplying the 1990 Baseline Inventory emissions for each emissions category by the appropriate growth factor.

PROJECTION METHODOLOGY FOR ON-ROAD MOBILE SOURCES

On-road mobile source projections are determined using the EPA's MOBILE5a software. The on-road mobile source 1999 Current Control Projection Inventory is based on 1990 emissions factors generated by MOBILE5a and the 1999 projected vehicle-miles-traveled (VMT) on the 1990 Delaware roadway network. The projection inventories for 1999 are developed by Vanasse Hangen Brustlin, Inc. under contract with DelDOT, following similar procedures as were used in the preparation of the on-road mobile source emissions in Delaware's 1990 Base Year Inventory.

The 1999 Current Control Projection Inventory for on-road mobile sources is based on VMT projections made by the network-based travel-demand models for Kent and New Castle Counties. The 1990 and 1999 VMT projections calculated by the travel demand models for each functional class are used to derive a growth factor which was applied to the 1990 VMT estimates from the Highway Performance Monitoring System (HPMS) data. This methodology provides consistency with the 1990 Base Year Inventory methodology, since they are both based on the HPMS VMT. The 1990 motor vehicle emission factors used in the 1999 Current Control Projection Inventory are the same as the emission factors used in the 1990 Base Year Inventory. The 1990 and milestone year VMT projections calculated by the travel demand models for each functional class were used to derive a growth factor which was applied to the 1990 VMT estimates from the Highway Performance Monitoring System (HPMS) data. This methodology provides consistency with the 1990 Base Year Inventory methodology, since they are both based on the HPMS VMT.

Calculation of Total Required VOC Emissions Reduction

The total amount of VOC emissions reductions that Delaware must plan to achieve in order to meet the rate of progress requirement for the 1990-1999 period is the difference between the 1999 Current Control Projection Inventory and the 1999 Target Level of VOC emissions. In other words, these are the VOC emissions reductions that must be achieved between 1990 and 1999 to satisfy not only the 15% Plan requirements but also the 3 percent per year rate of progress requirements for the period 1996-1999. The NO_x emissions reduction requirement for the 1990-1999 period is determined similarly. The required reductions are summarized in Table 13.

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TABLE 13
REQUIRED EMISSIONS REDUCTIONS FOR MILESTONE YEAR 1999
IN TONS PER PEAK OZONE SEASON DAY

Description	VOC	NO _x
Current Control Projection	159.738	184.059
Target Level	110.185	148.995
Emissions Reductions Required for 1999	49.553	35.064

PART III 1999 CONTROL STRATEGY PROJECTION INVENTORY AND CONTROL MEASURES

The 1999 Control Strategy Projection Inventory

The amounts of VOC and NO_x emissions reductions that Delaware must plan to achieve in order to meet the 3 percent per year rate of progress requirement for the milestone year 1999 are already determined and presented in Table 13. These emissions reductions will be achieved through the implementation of national, regional and local control measures. Some of the control measures are already presented in the 15% Plan. In order to show that the reductions associated with these new control measures are adequate to meet the 3 percent per year reduction requirement for the milestone year 1999, the 1990 Baseline emissions are projected to milestone year 1999 including the effects of both growth and the new control measures, and the resulting inventory is compared to the 1999 Target Level of VOC and NO_x emissions. The inventory that results from projecting 1990 Baseline emissions to the milestone year 1999 including growth and new controls is called the 1999 Control Strategy Projection Inventory. The 1999 control strategy projection inventory of VOC and NO_x emissions for the total nonattainment area and by county are in Tables 14 and 15, respectively.

To show that the control measures will be adequate to meet the average 3 percent per year rate of progress requirement, the expected level of the 1999 Control Strategy Projection emissions must be equal to or less than the 1999 target level of emissions. The total 1999 Control Strategy Projection Inventory of VOC and NO_x emissions respectively are 110.185 (Table 14) and 147.103 (Table 15) tons per peak ozone season day. The total 1999 Control Strategy Projection of VOC and NO_x emissions values are less than or equal to the respective target levels 110.185 and 148.995 tons per day (Table 9). Therefore, the control measures that are included in the 1999 Control Strategy Projection are adequate to meet the 3 percent per year rate of progress requirement for the 1996-1999 period.

TABLE 14
SUMMARY OF 1999 CONTROL STRATEGY PROJECTION INVENTORY VOC EMISSIONS IN TONS PER PEAK
OZONE SEASON DAY

Category	Kent County	New Castle County	Total Nonattainment area
Point Sources	1.279	21.313	22.592
Stationary Area Sources	10.247	27.999	38.246
Off-Road Mobile Sources	3.436	15.871	19.307
On-Road Mobile Sources	7.550	22.490	30.040
Total Emissions	22.512	87.673	110.185

TABLE 15
SUMMARY OF 1999 CONTROL STRATEGY PROJECTION INVENTORY NO_x EMISSIONS IN TONS PER PEAK
OZONE SEASON DAY

Category	Kent County	New Castle County	Total Nonattainment area
Point Sources	3.846	71.467	75.313
Stationary Area Sources	0.959	4.718	5.677
Off-Road Mobile Sources	8.266	19.167	27.433
On-Road Mobile Sources	10.270	28.510	38.780
Total Emissions	23.341	123.862	147.203

THE 1999 CONTROL STRATEGY PROJECTION METHODOLOGY

Projection Methodology for Point Sources

Point sources are projected on a process-by-process basis in accordance with the *Guidance for Growth/Projections/Strategies*. As explained in Part II of this summary, the method used to project point source emissions is dependent on whether or not a source will have new controls by the projection year. VOC and NO_x emissions for point sources that will have new controls by 1999 are projected at allowable emissions rates using the same point source projection equations that are used to determine the 1999 Current Control Projection Inventory. However, the projection data used for the 1999 Control Strategy Projection Inventory differs from the 1999 Current Control Projection Inventory. The difference is that the processes that will have new controls by 1999 will have updated controlled emissions factors, process control efficiencies, emissions rates, and rule effectiveness values instead of 1990 controls. VOC and NO_x emissions for point sources that will not have new controls by 1999 are projected by multiplying the 1990 actual baseline emissions by the appropriate growth factor.

The following is an example of 1999 Control Strategy Projection calculation for a point source process that will have new controls by 1999:

Example Point Source Calculation

The Delaware Regulations Governing Solid Waste have been revised since 1990 to include requirements for installation of gas control systems at all sanitary landfills. Control efficiencies for each affected landfill are determined based on design data for the proposed gas control systems. For the Cherry Island facility located in New Castle County, a control device efficiency (flare efficiency) of 98% and a capture efficiency of 51.49% are used to project the VOC emissions. The overall control efficiency for the Cherry Island landfill is:

$$0.98 \times 0.5149 = 0.5046 = 50.46 \%$$

Using the emissions projection equation:

$$EMIS_{py} = CRTPOL \times \frac{1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100}}{1 - \frac{CE_{QEFF}}{100} \times \frac{RE_{LEFF}}{100}} \times GF_{py}$$

where:

- $EMIS_p$ = Projection Year Emissions (Tons Per Peak Ozone Season Day)
- $CRTPOL$ = 1990 Base Year Ozone Season Actual Emissions (Tons Per Peak Ozone Season Day)
- CE_{py} = Projection Year Control Efficiency (Percent)
- RE_{py} = Projection Year Rule Effectiveness (Percent)

CE_{EFF}	= 1990 Base Year Control Efficiency (Percent)
$RULE_{EFF}$	= 1990 Base Year Rule Effectiveness (Percent)
GF_{py}	= 1999 Growth Factor (Dimensionless)

the 1999 projected VOC emissions value for the Cherry Island landfill with the addition of new controls is:

$$EMIS_{py} = 0.268 \times \frac{1 - \frac{50.46}{100} \times \frac{80}{100}}{1 - \frac{0}{100} \times \frac{0}{100}} \times 1.07 = 0.171 \text{ tons VOC/ day}$$

Projection Methodology for Stationary Area and Off-Road Mobile Sources

Stationary area and off-road mobile sources that *will not* be subject to new controls by 1999 are projected by multiplying the 1990 Baseline Emissions for the category by the appropriate growth factor. For stationary area and off-road mobile sources that *will* be subject to new controls by 1999, the 1999 Control Strategy Projections are determined in a manner similar to the point source 1999 Control Strategy Projections, using projection equations from the *Guidance for Growth/Projections/Strategies*. The main difference between the point source projections and the stationary area and off-road mobile source projections is that point source emissions are projected on a process-by-process basis as described above, while stationary area and off-road mobile source emissions are projected on a category-wide basis. Therefore, the 1999 Control Strategy Projection Inventory for stationary area and off-road mobile sources is determined using category-wide activity level data versus the process operating data that is used for point source projections.

The stationary area and off-road mobile source projection data reflects the 1999 controls and rule effectiveness values. A rule penetration value is also factored into the emissions projection. Rule penetration factors are used in conjunction with rule effectiveness to adjust regulated stationary area source emissions estimates. Rule penetration is the portion of an area source category that is affected by a regulation. If a regulation applies to only a certain percentage of sources within a source category, a rule penetration factor is applied to ensure that the rule effectiveness adjustment affects only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category.

The following is an example 1999 Control Strategy Projection calculation for a stationary area source category that will have new controls by 1999.

Example Stationary Area Source Calculation

Section 34 of Delaware Air Regulation 24 prohibits the manufacture, mixing, storage, use, and application of cutback asphalt during the ozone season. 1999 projected VOC emissions from cutback asphalt with new controls for Kent County are determined using the area source projection equation:

$$EMIS_{py} = ACTLEV \times EMF_{py} \times GF_{py} \times \left[1 - \frac{CE_{py}}{100} \times \frac{RE_{py}}{100} \times \frac{RP_{py}}{100} \right]$$

where:

$EMIS_p$	= Projection Year Emissions (Tons/Peak Ozone Season Day)
$ACTLEV^y$	= 1990 Baseline Activity Level (Production Units/Peak Ozone Season Day)
EMF_{py}	= Projection Year Emissions Factor (Mass of Pollutant/Production Unit)
GF_{py}	= Projection Year Growth Factor
CE_{py}	= Projection Year Control Efficiency (Percent)
RE_{py}	= Projection Year Rule Effectiveness (Percent)
RP_{py}	= Projection Year Rule Penetration (Percent)

The control efficiency and rule penetration are both determined from Section 34 of Regulation 12 to be 100%. The projected VOC emissions are:

$$EMIS_{py} = 0.173 \times 420 \times 0.87 \times \left[1 - \frac{100}{100} \times \frac{80}{100} \times \frac{100}{100} \right] \times \frac{1}{2000} \text{ tons VOC/ day}$$

$$= 0.006 \text{ tons VOC/ day}$$

Projection Methodology for On-Road Mobile Sources

The on-road mobile source 1999 Control Strategy Projection Inventory is determined from 1999 emissions factors generated by MOBILE5a and the projected vehicle-miles-traveled (VMT) on the 1996 Delaware roadway network. The 1999 VMT projections are determined using the network-based Travel Demand Model for Kent and New Castle Counties. The 1990 and 1999 VMT projections, calculated by the travel demand models for each functional class, are used to derive a growth factor which was applied to the 1990 VMT estimates from the Highway Performance Monitoring System (HPMS) data. This methodology provides consistency with the 1990 Base Year Inventory methodology, since they are both based on HPMS VMT. The on-road mobile source projection inventory is developed by Vanasse Hangen Brustlin, Inc. under contract with DelDOT.

CONTROL MEASURES

The control measures that Delaware plans to implement in order to meet the average 3 percent per year rate of progress for the milestone year 1999 are listed in Tables 16. The VOC and NO_x emissions reductions from each control measure are listed in Table 16. The VOC and NO_x emissions reductions for the nonattainment area are 49.553 and 36.856 tons per peak ozone season day, respectively. The VOC and NO_x reductions that are required by Delaware in order to meet the average 3 percent rate of progress requirement are 49.553 and 35.064 tons per peak ozone season day, respectively (determined in Part II of this summary). Therefore, the control measures listed in Tables 16 are adequate to meet the 3 percent per rate of progress requirement for the milestone year 1999.

Figure 8. VOC Emissions Reductions by Source Category for 1999 RPP to be inserted here. Please contact DNREC for information

Figure 9. NO_x Emissions Reductions by Source Category for 1999 RPP to be inserted here. Please contact DNREC for information.

¹ Federal Clean Air Act, 42 U.S.C.A. 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990

² Ozone Attainment Demonstrations, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, Washington, D.C. 20460, March 02, 1995

³ Act, Title I, Part D, Sec. 181

⁴CAAA, Title I, Part D, Sec. 172(c)(3) and Sec. 182

⁵ *NO_x Substitution Guidance*, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, December, 1993.

⁶ *Clarification of Policy for Nitrogen Oxides (NO_x) Substitution*, from John Seitz, Director, Office of Air Quality Planning and Standards, July 12, 1994.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

**DIVISION OF STATE SERVICE CENTERS
OFFICE OF COMMUNITY SERVICES**

**COMMENTS REQUESTED ON THE 1998
COMMUNITY SERVICES BLOCK GRANT (CSBG)
STATE PLAN**

The public is hereby notified that the Delaware Department of Health and Social Services, Division of State Service Centers, Office of Community Services will apply to the U.S. Department of Health and Human Services for Community Services Block Grant (CSBG) funds for the State of Delaware. The proposed 1998 CSBG State Plan is available for public review and comment from November 19, 1997, through December 19, 1997, the date of the legislative public hearing to be held at Buena Vista conference Center, Route 13, New Castle at 10:00 a.m. Write, phone, or fax comments to:

Dennis J. Savage, Administrator
Office of Community Services
Dept. of Health & Social Services
P.O. Box 8911
Wilmington, DE 19899-8911
Telephone: (302)577-3491 / Fax: (302)577-2383

Public Review locations include all State Service Centers: Appoquinimink; Belvedere; Claymont; Northeast; Winder Laird Porter; DeLaWarr; Floyd I. Hudson; James W. Williams; Milford; Bridgeville; Seaford; Georgetown; Laurel; Edward W. Pyle; and:

Office of Community Services Carvel State Building, 4th Floor 820 N. French Street Wilmington, DE 19801 577-3491	Neighborhood House 24 North Broad Street Middletown, DE 19709 378-7217
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Food Bank of Delaware 14 Garfield Way Delaware Industrial Park Newark, DE 19713 292-1305	State Budget Office Thomas Collins Building Dover, DE 19901 739-3326
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Delmarva Rural Ministries 26 Wyoming Ave. Dover, DE 19901 678-2000	Neighborhood House 1218 B Street Wilmington, DE 19801 652-3928
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First State Community Action Agency
308 North Railroad Avenue
Georgetown, DE 19947

**BEFORE THE PUBLIC SERVICE
COMMISSION
OF THE STATE OF DELAWARE**

**IN THE MATTER OF THE
IMPLEMENTATION OF
THE UNIVERSAL SERVICE
PROVISIONS OF THE
TELECOMMUNICATIONS
ACT OF 1996
(OPENED AUGUST 12, 1997)**

PSC REGULATION
DOCKET NO. 48

ORDER NO. 4639

This 4th day of November, 1997, the Commission directs and orders the following:

I. INTRODUCTION

1. In the Telecommunications Act of 1996 (the "Act"),¹ Congress directed the Federal Communications Commission ("FCC") and the state utility commissions to take various steps to establish explicit support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. 47 U.S.C. § 254. Specifically, Congress directed the FCC, in conjunction with the states, to devise methods to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas ... have access to telecommunications and information services ... at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3). To provide support for such services, Congress directed the creation of federal universal service mechanisms. 47 U.S.C. § 254(b)(5), (d).

2. In May 1997, the FCC released its Universal Service Order ("USF Order") implementing the various universal service obligations imposed under § 254. In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report & Order, FCC 97-157 (rel. May 8, 1997). Both the USF Order and the Act itself imposed on the state commissions various obligations related to the implementation of the federal universal service support programs and funding mechanisms. Accordingly, by Order 4571, dated August 12, 1997, the Commission opened this docket for the purpose of investigating and determining such actions as are necessary and advisable to fulfill those obligations.

3. This Order deals with two issues: (1) Participation in the Lifeline and Link Up programs; and (2) designation of Eligible Telecommunications Carriers ("ETCs").

Lifeline and Link Up

4. Since 1985, the FCC has administered the federal Lifeline and Link Up programs to assist low-income telephone consumers. Under the present Lifeline program, the eligible end user's local service bill may be reduced by up to twice the \$3.50 federal Subscriber Line Charge ("SLC"). In order to participate, the state must authorize a matching (or greater) reduction in the intrastate end user charges. The companion Link Up program currently pays one-half of the first \$60 of residential installation charges for eligible recipients. Since 1993, the Commission has authorized Bell Atlantic-Delaware, Inc. ("BA-Del") to participate in the Link Up program. However, the Commission has declined to participate in the Lifeline program because of Delaware's already high level of household telephone subscription and low dial tone rates, and because of doubts as to whether the Commission is the appropriate body to undertake the sort of social policy determinations which participation in the program requires.

5. However, by the USF Order, the FCC changed the structure of the Lifeline and Link Up programs effective January 1, 1998. Under the Lifeline modifications, all eligible telecommunications carriers will be required to provide to qualifying low-income subscribers, federal Lifeline support for specified local services in an amount at least as great as the federal baseline support amount of \$3.50. 47 CFR § 54.403. This baseline support level will be available for all eligible subscribers in all states, without the need for any state participation. In addition, under the new Lifeline program, if the state approves an additional reduction of \$1.75 in the amount to be paid by the eligible end user, the federal support mechanism will make such amount available to the carrier providing such service to that consumer. *Id.* For both the baseline amount and the additional \$1.75 reduction, the state need not generate any matching funds. The support will be paid from a federal pool funded by all interstate carriers.

6. The FCC Order did not change the nature of the support available under the Link Up programs. However, Link Up reimbursements will now also come from the federal pool funded by contributions from all interstate carriers.

Eligible Telecommunications Carriers

7. Under the USF, as of January 1, 1998, only "eligible telecommunications carriers" will be eligible to receive support from the federal universal support mechanisms. That Order delegated to the states the responsibility of designating such common carriers as meet the requirements of 47 U.S.C. § 214(e)(2) for "eligible telecommunications carriers for a service area designated by the State Commission." The FCC determined that neither the states nor the FCC itself is authorized to adopt criteria for ETCs beyond those set forth in § 214(e)(1). USF ¶ 135. Though responsibility for defining

service areas is delegated to the states, the FCC has provided the states with guidance in making this determination:

We . . . encourage state commissions not to adopt as service areas the study areas of large ILECs. In order to promote competition, we further encourage state commissions to consider designating service areas that require ILECs to serve areas that they have not traditionally served. We recognize that a service area cannot be tailored to the natural facilities-based service area of each entrant but note that ILECs, like other carriers, may use resold wholesale service or unbundled network elements to provide service in the portions of a service area where they have not constructed facilities.

USF Order ¶ 185.

II. DISCUSSION

8. By a report submitted October 31, 1997, the Commission's Staff recommended that, given the changes in the Lifeline program, the Commission should endorse Lifeline participation, limited to the automatic \$3.50 baseline, plus the \$1.75 additional reduction, both financed by federal funds. As Staff observed, given the lack of any matching requirement, Delaware has little reason to choose not to participate. Staff further recommended continued participation in the Link Up program.

9. Staff recommends that the service area applicable to Delaware's only ILEC, BA-Del, be defined, on an interim basis, as the State of Delaware. Staff has explained that BA-Del already serves the entire State and that it is necessary to promptly define a service area for BA-Del, in order to allow BA-Del to apply for ETC status and begin offering Lifeline and Link Up to low income Delawareans by January 1, 1998. Staff further recommends that other carriers seeking ETC designation set forth a proposed service area in their application to the Commission. The Commission may then consider the appropriateness of the proposed service area, together with its consideration of the carriers compliance with the remaining criteria.

10. In view of the impending January 1, 1998 commencement date of the revised Lifeline and Link Up programs, the Commission must act promptly to ensure that, by that date, it has authorized Delaware's participation in those programs, and has designated any carrier meeting the federal criteria and applying for ETC status as an ETC. The Commission cannot take such actions on time to make the federal deadline while also complying with the notice provisions imposed by 29 Del. C. §§ 1105 and 10118.

Accordingly the Commission deems this an appropriate instance to exercise the authority granted it by the General Assembly, set forth at 26 Del. C. § 703, to deviate from Title 29's procedural requirements when appropriate to facilitate compliance with obligations imposed by the Act.

11. However, the Commission wishes to provide such opportunity for public participation in this matter as is feasible given the federal time frame prior to determining whether to adopt Staff's recommendations. Accordingly, the Commission will solicit public comment and will consider the positions of any person submitting comments on an expedited schedule. Thus, by this Order, the Commission directs its Secretary to promptly have published a public notice in the form attached hereto as Exhibit "A". The notice shall describe the actions being considered by the Commission and solicit public written comment to be submitted within twenty (20) days of publication.

12. The Commission will consider the comments received and deliberate at its regularly scheduled public meeting of December 16, 1997.

13. This schedule is designed to allow the Commission to issue an Order, if appropriate, prior to December 31, 1997.

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. That the Secretary of the Commission shall have published the Notice attached as Exhibit "A" in the News Journal and Delaware State News newspapers on the earliest date such publication may be obtained. In addition, the Secretary shall mail a copy of such notice to (1) the Public Advocate; and (2) all persons who have made timely requests for advance notice of rulemaking proceedings. Finally, the Secretary shall file the notice with the Registrar of Regulations for publication in the Register of Regulations.

B. That the Commission shall consider the written comments received and deliberate at its regularly scheduled public meeting of December 16, 1997.

C. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman
 Joshua M. Twilley, Vice Chairman
 Arnetta McRae, Commissioner
 Donald J. Puglisi, Commissioner
 John R. McClelland, Commissioner

ATTEST:

Linda A. Mills, Secretary

EXHIBIT "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
 OF THE STATE OF DELAWARE**

IN THE MATTER OF THE		
IMPLEMENTATION OF		PSC REGULATION
THE UNIVERSAL		DOCKET NO. 48
SERVICE PROVISIONS OF THE		
TELECOMMUNICATIONS ACT		
OF 1996		
(OPENED AUGUST 12, 1997)		

**NOTICE OF PROPOSED COMMISSION ACTION
 CONCERNING FEDERAL ASSISTANCE
 FOR LOW-INCOME
 TELEPHONE CONSUMERS**

**TO: All Telecommunications Carriers, and Other
 Interested Persons**

The Telecommunications Act of 1996 (the "Act") Public Law 104-104, 110 Stat 56, (codified at 47 U.S.C. § 251, et seq.) and Federal Communications Commission ("FCC") orders implementing the Act have revised the existing federal Lifeline and Link Up assistance programs for low-income consumers. Under the new federal standards, eligible Delaware low-income consumers may be eligible for up to \$5.25 in federally funded assistance, without contribution of any state funds as of January 1, 1998. Prior to that date, the Delaware Public Service Commission ("PSC") must elect to allow eligible Delaware telecommunications carriers to participate and must designate such carriers and define their service areas.

Accordingly, the PSC hereby gives notice that it is considering taking the following actions and adopting the following criteria to govern participation of Delaware telecommunications carriers in these programs:

1. That the Commission will approve a reduction of \$1.75 in local service billings to be paid by eligible Lifeline customers as defined in 47 CFR § 54.409(b) for eligible Lifeline services (as defined in 47 CFR § 54.401(a)). Such amount shall be in addition to any reduction based upon the \$3.50 federal baseline amount. Eligible telecommunications carriers may receive federal Lifeline support in the amount of the \$3.50 federal baseline amount plus the additional \$1.75 reduction of intrastate end-user charges. The reduction of \$1.75 shall continue only so long as such amount is supported by federal universal service funds;
2. That the Commission will approve telecommunications carriers designated as eligible

- telecommunications carriers receiving support under the federal Link Up program. Such support shall be used to provide discounts (as described in 47 CFR § 54.411) to eligible Lifeline customers;
3. That eligible telecommunications carriers shall comply with all federal rules governing the Lifeline and Link Up programs, including those related to disconnection, toll limitation, and service deposits. To the extent that a federal rule governing Lifeline or Link Up conflicts with a rule or order of this Commission, the state order or rule shall be preempted to the extent of the conflict in the case of the Lifeline or Link Up customer;
 4. That telecommunications carriers designated as eligible telecommunications carriers shall file appropriate tariffs consistent with the federal Lifeline and Link Up programs and paragraphs (1), (2) and (3) above;
 5. That eligible telecommunications carriers which offer Lifeline or Link Up shall verify the customer's participation in the manner described in 47 CFR § 54.409(b);
 6. That retail services supported by Lifeline and Link Up may be purchased for resale under 47 U.S.C. § 251(c)(4) but such services may not be resold to end users not eligible to subscribe to such services;
 7. That, to be deemed eligible telecommunications carriers, all applicants must offer the following services: (a) single party service; (b) voice grade access to the public switch network; (c) Dual Tone Multi-Frequency ("DTMF") Signaling or its functional equivalent ("Touchtone[†]"); (d) access to emergency services (e.g., 911 and E911); (e) access to operator services; (f) access to interexchange service; (g) access to directory assistance; (h) toll limitation for qualifying low-income consumers; and (i) Lifeline and Link Up service (47 CFR §§ 54.401, 405, 411);
 8. That all applications requesting certification as eligible telecommunications carriers must demonstrate the following: (a) that the company is a telecommunications carrier; (b) that, within ten (10) days of becoming certificated by the Commission as an eligible telecommunications carrier, that the company shall publish notice in the News Journal and Delaware State News of the services and their charges that it proposes to offer as an eligible telecommunications carrier and provide the affidavits of publication to the Secretary of the Commission within twenty (20) days; (c) that the company offers Lifeline and Link Up services that fully comply with both Federal and State requirements; (d) that the company describes the availability of Lifeline and Link Up services in its white pages directory; (e) that the company provide discounted services to schools, libraries and rural healthcare providers in accordance with Federal and State requirements, including 54 CFR § 54.501-623;
 9. That the Commission define the service area applicable to Bell Atlantic-Delaware, Inc. ("BA-Del") as the entire State of Delaware;
 10. That any other carrier requesting certification as an eligible telecommunications carrier shall, in its application for such designation, propose an appropriate service area for the Commission's consideration; and
 11. That companies acting as "aggregators," as defined in 47 U.S.C. § 226 (generally operators of pay telephones), are not eligible for designation as eligible telecommunications carriers.
- The Commission solicits written comments concerning these proposals. Ten (10) copies of all materials submitted shall be filed on or before November 26, 1997 at the Public Service Commission's office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. The Commission shall consider the comments received and deliberate thereon at its regularly scheduled meeting to be held at the above address on December 16, 1997.
- Any individual with disabilities who wishes to participate in these proceedings should contact the PSC to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of Telecommunications Relay Service or otherwise. The PSC's toll-free telephone number is (800) 282-8574. Persons with questions concerning this notice may contact the PSC's Public Information Officer by either Text Telephone (TT) or by regular telephone at (302) 739-4333 or by Email at mcarl@state.de.us.

¹ Public Law 104-104, 110 Stat 56, codified at 47 U.S.C. §251 et. seq.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

The Commission proposes the repeal of Rule 15.02(e) pursuant to 3 *Del. C.* sections 10103 and 10128(m)(1), and 29 *Del. C.* section 10115. The proposed repeal of Rule 15.02(e) would allow for two year old horses to participate in the bleeder program. The proposed Rule will be considered by the Commission at its next regularly scheduled meeting on January 5, 1997 at 11:00 a.m. at the Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Copies of the proposed rule may be obtained from the Commission. Comments may be submitted in writing to the Commission Office on or before 4:00 p.m. on December 30, 1998. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

DEPARTMENT OF FINANCE
DIVISION OF REVENUE

The following shall constitute Regulations of the Division of Revenue as authorized in 30 *Del. C.* §§ 354 and 563. The comment period shall run from December 1, 1997, to December 31, 1997, and comments should be addressed to William M. Remington at the above address.

Thirty *Del. C.* § 1306(a) provides for inclusion in the gross estate of "the value of all taxable gifts, as defined in § 1401 of this title, made by the decedent in contemplation of death."

Subsection (b) of that section provides that taxable gifts made within six months of death are presumed to have been made in contemplation of death and also provides that no gifts made more than six months before death are to be treated as having been made in contemplation of death.

The state gift tax is repealed effective for gifts made on or after January 1, 1998. 71 *Del. Laws.* ch. 130.

The legislative history of ch. 130 does not reveal an intent to alter the treatment of gifts made in contemplation of death and in fact manifests an intention that such treatment continue for purposes of the state inheritance tax. Thus, gifts that are taxable for federal gift tax purposes (i.e., those in excess of the \$10,000 annual per donee exclusion) shall be presumed made in contemplation of death and thereby included in the gross estate if they were made within six months of the donor's death.

This Regulation unless subsequently changed or withdrawn shall be effective for gifts made after December 31, 1997.

CONTACT:

William M. Remington, Director of Revenue
 Division of Revenue
 820 North French Street
 Wilmington, Delaware 19801
 (302) 577-8686
 email: wremington@state.de.us

**DEPARTMENT OF HEALTH &
 SOCIAL SERVICES**
IN THE MATTER OF:

**REVISION OF
 REGULATIONS
 CONTAINED IN DSSM
 8205.2, 8304, AND 8305**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has implemented on an emergency basis the below revision of regulations contained in DSSM Section 8000 and is now accepting comments in preparation for adoption of these changes on a permanent basis.

NOTICE OF COMMENT PERIOD

The Department will receive and consider comments regarding the proposed changes. Such comments must be forwarded by December 31, 1997, to the Director, Division of Social Services, P.O. Box 906, New Castle, DE 19720.

**DEPARTMENT OF HEALTH &
 SOCIAL SERVICES**
IN THE MATTER OF:

**REVISION OF REGULATION
 CONTAINED IN DSSM 8201**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has implemented on an emergency basis the below revision of regulations contained in DSSM Section 8201 and is now accepting comments in preparation for adoption of these changes on a permanent basis.

NOTICE OF COMMENT PERIOD

The Department will receive and consider comments regarding the proposed changes. Such comments must be forwarded by December 31, 1997, to the Director, Division of Social Services, P.O. Box 906, New Castle, DE 19720.

CARMEN R. NAZARIO
SECRETARY

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

**DIVISION OF STATE SERVICE CENTERS
OFFICE OF COMMUNITY SERVICES**

**COMMENTS REQUESTED ON THE 1998
COMMUNITY SERVICES BLOCK GRANT (CSBG)
STATE PLAN**

The public is hereby notified that the Delaware Department of Health and Social Services, Division of State Service Centers, Office of Community Services will apply to the U.S. Department of Health and Human Services for Community Services Block Grant (CSBG) funds for the State of Delaware. The proposed 1998 CSBG State Plan is available for public review and comment from November 19, 1997, through December 19, 1997, the date of the legislative public hearing to be held at Buena Vista conference Center, Route 13, New Castle at 10:00 a.m. Write, phone, or fax comments to:

Dennis J. Savage, Administrator
Office of Community Services
Dept. of Health & Social Services
P.O. Box 8911
Wilmington, DE 19899-8911
Telephone: (302)577-3491 / Fax: (302)577-2383

**DEPARTMENT OF NATURAL RE-
SOURCES &
ENVIRONMENTAL CONTROL****REGISTER NOTICE****1. TITLE OF THE REGULATIONS:**

**The Delaware 1999 Rate-of-Progress Plan for Kent
and New Castle Counties**

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

The Clean Air Act Amendments (CAAA) of 1990 require States with ground-level ozone nonattainment areas classified as severe or above to provide for, in addition to 15-percent reduction in volatile organic compounds (VOC) emissions by 1996, a VOC reduction or an equivalent nitrogen oxide (NO_x) reduction of 3 percent per year averaged over each 3-year period beginning November 1996 until the area's applicable attainment date. These reductions are achieved through the development and implementation of Rate-of-Progress Plans that contain pollution control measures. Kent and New Castle Counties are classified as a severe nonattainment area, with an attainment date of November 2005. Therefore, rate-of-progress plans for Kent and New Castle Counties must be submitted to the USEPA for milestone years 1999, 2002, and 2005. The first of these plans, the 1999 Rate-of-Progress Plan, has been developed and is now being proposed as a revision to Delaware's State Implementation Plan for attaining the ozone standard. The 1999 Rate-of-Progress Plan explains the methods and pollution control strategies that will achieve the required average pollution reduction of three percent per year between 1997 and 1999.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO
ACT:**

7 Del. C., Chapter 60 Section 6010
Clean Air Act Amendments of 1990

**5. OTHER REGULATIONS THAT MAY BE AFFECTED
BY THE PROPOSAL:**

None

6. NOTICE OF PUBLIC COMMENT:

The Department is holding a Public Hearing on "The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties" on Monday, December 22, 1997 at 6:30 p.m. at Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, Delaware. If you have any questions or need any additional information, please contact Mr. Alfred R. Deramo at (302) 739-4791.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Chapter 3 (31 Del.C. Ch. 3)

Pursuant to 31 Del.C. Chapter 3, the Division of Family Services has revised licensing requirements for Residential Child Care Facilities and Day Treatment Programs.

A public hearing to consider the proposed regulations has been scheduled as follows:

January 13, 1998, 10:00 a.m. to 12:00 noon
Delaware Youth and Family Center
First Floor Conference Room 199
1825 Faulkland Road
Wilmington, Delaware 19805

The regulations address general requirements, staff qualifications and training, physical environment and safety, program specifications, health and nutrition, on-grounds educational programs and specialized programs which include: secure residential care, shelter care, transitional care, day treatment programs, restrictive procedures, adventure activity, parenting adolescent facility.

Written comments may be submitted to Janet I. Carter, Licensing Supervisor, Office of Child Care Licensing, 400 Court Street, Dover, Delaware 19901.

INSURANCE DEPARTMENT

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday, December 17, 1997 at 10:00 a.m. in the First Floor Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover Delaware. The purpose of the Hearing is to solicit comments from the industry, the medical community and the general public on Auto Bulletin No. 10 regarding payment of Personal Injury Protection (PIP) Benefits. The Hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Wednesday, December 10, 1997, and should be addressed to Michael W. Teichman, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Michael W. Teichman at (302)739-4251, Ext. 171 or (800)282-8611 no later than Wednesday, December 10, 1997.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE IMPLEMENTATION OF THE UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996 (OPENED AUGUST 12, 1997) | PSC REGULATION DOCKET NO. 48

ORDER NO. 4639

In view of the impending January 1, 1998 commencement date of the revised Lifeline and Link Up programs, the Commission must act promptly to ensure that, by that date, it has authorized Delaware's participation in those programs, and has designated any carrier meeting the federal criteria and applying for ETC status as an ETC. The Commission cannot take such actions on time to make the federal deadline while also complying with the notice provisions imposed by 29 Del. C. §§ 1105 and 10118. Accordingly the Commission deems

this an appropriate instance to exercise the authority granted it by the General Assembly, set forth at 26 Del. C. § 703, to deviate from Title 29's procedural requirements when appropriate to facilitate compliance with obligations imposed by the Act.

However, the Commission wishes to provide such opportunity for public participation in this matter as is feasible given the federal time frame prior to determining whether to adopt Staff's recommendations. Accordingly, the Commission will solicit public comment and will consider the positions of any person submitting comments on an expedited schedule. Thus, by this Order, the Commission directs its Secretary to promptly have published a public notice in the form attached hereto as Exhibit "A". The notice shall describe the actions being considered by the Commission and solicit public written comment to be submitted within twenty (20) days of publication.

The Commission will consider the comments received and deliberate at its regularly scheduled public meeting of December 16, 1997.

This schedule is designed to allow the Commission to issue an Order, if appropriate, prior to December 31, 1997.
